

No. 12924

2683

United States
Court of Appeals
for the Ninth Circuit.

G. McGUIRE PIERCE,

Appellant,

vs.

LINCOLN MINING COMPANY, INC., a Corpo-
ration, Debtor,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Nevada.

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Transcript of Record

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for the District of Nevada.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

For the appellant:

HAWKINS & CANNON,

125 South Second Street,
Las Vegas, Nevada.

KYLE Z. GRAINGER, ESQ.,

830 H. W. Hellman Building,
354 South Spring Street,
Los Angeles 13, California.

For the appellee:

MORSE & GRAVES,

Beckley Building,
Las Vegas, Nevada.

JOHN S. HALLEY, ESQ.,

P. O. Box 1684,
Reno, Nevada.

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United States District Court for the
District of Nevada

In the Matter of

LINCOLN MINING COMPANY, INC., a Corporation,

Debtor.

DEBTOR'S PETITION FOR CORPORATE
REORGANIZATION

To the Honorable Roger T. Foley, Judge of the
United States District Court for the District of
Nevada:

The Petition of Lincoln Mining Company, Inc.,
the above-named debtor, respectfully shows:

1. The debtor is a corporation duly organized and existing under the laws of the State of Nevada and has had as its principal place of business at Hiko, Lincoln County, Nevada, within the above Judicial District, for a longer portion of the six months immediately preceding the filing of this petition.

2. The debtor is a corporation as defined in the Bankruptcy Act which could be adjudged a bankrupt under the said Act, and is not a municipal, insurance or banking corporation, or a building and loan association, and is not a railroad corporation authorized to file a petition under Section 77 of the said act.

3. The debtor is unable to pay its debts as they mature, as will more particularly appear from the schedules hereinafter referred to.

4. The debtor desires that a plan of reorganization be effected under provisions of Chapter X of the Bankruptcy Act.

5. The nature of the debtor's business is mining of minerals and mineral substances, and the operation of a mill for the reduction and refining of such ores.

6. The schedule hereto annexed, marked Exhibit "A," and verified by the oath of the General Manager of the debtor, duly authorized so to do by the debtor, contains a full and true statement of all of the debts and liabilities of your petitioner.

7. The schedule hereto annexed and marked Exhibit "B," and verified by the oath of the General Manager as aforesaid of your petitioner, contains an accurate inventory of all of the assets of your petitioner.

8. The schedule hereto annexed and marked Exhibit "C," and verified by the oath of the General Manager as aforesaid of your petitioner, contains a statement of the affairs of your petitioner in the form prescribed by the General Orders in Bankruptcy for debtors engaged in business.

9. In order for your petitioner to obtain relief, it is necessary that the rights of secured creditors of the debtor be modified, and in this respect your petitioner alleges that Atolia Mining Company, a

corporation; Pacific Mining Company, a corporation, and P. R. Bradley, Jr., Trustee, by the terms of a contract of conditional sale made by them as "seller," and Wesley Koyen, Eva H. Koyen, George W. Thiriot and Dean P. Thiriot as "buyers," and which contract of conditional sale together with the property therein described was purchased by debtor, and by the terms of said purchaser assumed and agreed to pay the balance due under said contract; that the total sum of said contract was the sum of Six Thousand Dollars (\$6,000.00) payable in monthly installments of Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$333.33) with interest on the unpaid balance at the rate of six (6%) per cent per annum; that the holder of said contract of conditional sale claims a total amount due of Three Thousand One Hundred and Eleven Dollars and Seventy-Eight Cents (\$3,111.78); that the personal property sold and described in said contract of conditional sale consists of the following:

1 mine hoist, electric motors and switches.

1 concentrator table, together with electric pumps all of the value of Six Thousand Dollars (\$6,000.00).

Debtor further alleges that there is due it from said Atolia Mining Company the sum of Four Thousand Seven Hundred and Twenty-Eight Dollars (\$4,728.00) by virtue of an assignment of an agreement entered into between said Atolia Mining Company, and said Wesley Koyen and Eva H. Koyen, and George W. Thiriot and Dean P. Thiriot, upon which there became due from said Atolia Mining

Company that said sum of Four Thousand Seven Hundred and Twenty-Eight Dollars (\$4,728.00) and which for a valuable consideration has been assigned to the debtor herein.

10. That Atolia Mining Company, a corporation; Pacific Mining Company, a corporation, and P. R. Bradley, Jr., Trustee, as "sellers" under said contract of conditional sale threaten to seize and remove the personal property consisting of the machinery herein above described, all of which is a part of a mill being operated upon the property of petitioner.

11. That by reason of the immediate danger of the removal of said property by said Atolia Mining Company, et al., your petitioner has had not sufficient time in which to prepare and submit for the approval of this Court a plan of reorganization. After the filing of this petition, debtor will ask leave of this Honorable Court to amend its petition by setting forth such plan.

Wherefore your petitioner prays:

1. That an order be entered approving the debtor's petition as properly filed;

2. That an order be entered continuing your petitioner in possession and giving directions for the conduct of your petitioner's business during the pendency of these proceedings;

3. That Atolia Mining Company, a corporation; Pacific Mining Company, a corporation, and P. R. Bradley, Jr., Trustee, and any and all other creditors, be enjoined and restrained from removing any

of the property of the debtor wherever situate, and from in any manner interfering with the operation and conduct of said business by the debtor, and for such further and other relief as the Court shall deem necessary and proper.

LINCOLN MINING COMPANY,
INC.,

By /s/ WESLEY KOYEN,
Debtor.

MORSE & GRAVES, and
JOHN S. HALLEY,
By /s/ JOHN S. HALLEY,
Attorneys for Debtor.

State of Nevada,
County of Clark—ss.

Wesley Koyen, being duly sworn, deposes and says, that he is the General Manager of Lincoln Mining Company, Inc., a Nevada corporation, the debtor in the above-entitled proceedings; that he has read the foregoing Debtor's Petition for Corporate Reorganization; that he has personal knowledge of the facts therein set forth, and that the same are true.

/s/ WESLEY KOYEN.

Subscribed and sworn to before me this 20th day of March, 1950.

[Seal] /s/ A. J. SOHUR,
Notary Public.

EXHIBIT "A"

Atolia Mining Company, Pacific Mining Company, and P. R.
Bradley, Jr., Trustee,
Crocker Bank Building,
San Francisco, California.

Contract of Conditional Sale	
Amount Claimed	\$3,111.78

Bank of Nevada, Las Vegas, Nevada.

Installment Contract— One KVA International Diesel Power Unit	
Balance	2,750.00

First National Bank of Nevada, Tonopah, Nevada.

Conditional Sales Contract on International K-6—'49 Truck	
Balance	3,500.00

Foster Smith, Mina, Nevada.

Open Account	1,300.00
--------------------	----------

Kavanaugh Bros., Tonopah, Nevada.

Open Account	250.00
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Hodges Cook Mercantile Co., Pioche, Nevada.

Open Account	450.00
--------------------	--------

Walter Ray, Caliente, Nevada.

Open Account	850.00
--------------------	--------

Van Voriees, Bishop, California.

Open Account	400.00
--------------------	--------

Clark County Wholesale Mercantile Co.,
Las Vegas, Nevada.

Open Account	350.00
--------------------	--------

Lincoln County, Nevada.

General Taxes, 1949	400.00
---------------------------	--------

Thiriot Bros., Hiko, Nevada.

For grading and hauling.....	Amount Undetermined
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Wesley Koyen, Hiko, Nevada.

For hauling	Amount Undetermined
-------------------	---------------------

General Labor Claims

More than six months' past due.....	Approximately \$5,000.00
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EXHIBIT "B"

Name of Claim	Original Notice of Location Recorded Records of Lincoln County, Nevada		Amended Notice of Location, if Any Recorded, Records Lincoln Co., Nev.	
	Book	Page	Book	Page
Patented Claims (U.S. Mineral Survey No. 4760)				
Dome	L-1	384	M-1	211
Grubstake No. 2.....	L-1	328	M-1	211
Lime Cap	L-1	79	M-1	211
Scheelite	M-1	6	M-1	209
Scheelite No. 1.....	M-1	6	M-1	210
Scheelite No. 2.....	M-1	7	M-1	209
Townsite	L-1	402	M-1	212
Townsite No. 1.....	L-1	402	M-1	207
Townsite No. 2.....	M-1	7	M-1	213
Townsite No. 5.....	.....	.....	M-1	207

Claims Held by Location

Dome No. 1.....	N-1	209-210		
Dome No. 2.....	N-1	210-211		
Grubstake No. III	L-1	329	N-1	248-249
Grubstake No. IV.....	L-1	329	N-1	249
Grubstake No. V.....	L-1	353		
Grubstake No. 6.....	L-1	353		
Limecap No. 1.....	L-1	327		
Limecap No. 3.....	N-1	211-212		
North Contract No. 1.....	N-1	212-213		
North Contract No. 2.....	N-1	213		
Pyramid	L-1	384	N-1	247-248
Pyramid No. 1.....	N-1	211		
Scheelite No. 3.....	M-1	367-368	N-1	200-201
Scheelite No. 4.....	M-1	367	N-1	201-202
Scheelite No. 5.....	M-1	368	N-1	250-251
Scheelite No. 6.....	M-1	369	N-1	251-252
Scheelite No. 7.....	N-1	213-214		
Scheelite No. 8.....	N-1	202		
Scheelite No. 9.....	N-1	203		

Value of Claims—\$100,000.00 approximately.

[Endorsed]: Filed March 22, 1950.

[Title of District Court and Cause.]

ORDER APPROVING PETITION

This cause having come on to be heard on the verified petition of the above-named debtor praying that proceedings be had under Chapter X of the Act of Congress relating to Bankruptcy, and it appearing that no notice of said hearing should be given, said debtor being represented by Morse & Graves and John S. Halley, and after hearing John S. Halley, one of the Attorneys for said debtor in favor of said petition,

Now, upon said petition and all of the proceedings had before me at the said hearing and due deliberation having been had thereon; the

Court Is Satisfied and Does Find

1. That the petition of Lincoln Mining Company, the above-named debtor, verified the 20th day of March, 1950, praying that proceedings be had under Chapter X of the Act of Congress Relating to Bankruptcy, complies with the requirements of said Chapter X;

2. That said petition has been filed in good faith; and

It Is Ordered

3. That said petition be, and it hereby is, approved.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed March 22, 1950.

[Title District Court and Cause.]

ORDER CONTINUING PETITIONER IN
POSSESSION OF ITS PROPERTY, AND
RESTRAINING ORDER

Upon reading and filing the petition of Lincoln Mining Company, Inc., verified by Wesley Koyen, General Manager, and the exhibits and schedules thereto annexed,

It Is Ordered That until further order of this Court, the debtor remain in possession of its property for the purpose of conducting its business during the pendency of these proceedings; that it is further ordered that Atolia Mining Company, a corporation; Pacific Mining Company, a corporation; P. R. Bradley, Jr., Trustee, and all other persons and creditors of the debtor corporation herein, be and they are enjoined and restrained from removing any of the personal property now situated upon the mining property of the debtor, and from in any manner interfering in the operation and conduct of the business of petitioner.

Dated at Reno, Nevada, this 22nd day of March, 1950.

/s/ ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed March 22, 1950.

[Title of District Court and Cause.]

ORDER OF REFERENCE

This cause having come on to be heard on the verified petition of the above-named debtor, verified on the 20th day of March, 1950, praying that proceedings be had under Chapter X of the Act of Congress relating to bankruptcy, and the court having heretofore entered its order approving said petition after having heard John S. Halley, one of the Attorneys for said petitioner in favor of said petition,

Now, upon said verified petition and all of the proceedings had before me at the said hearing and due deliberation having been had thereon; it is

Ordered that any and all matters arising in this proceeding, except such matters as are reserved to the Judge, by the provisions of Chapter X of the Act of Congress relating to bankruptcy, be, and they hereby are, referred to Frank W. Ingram, as Referee in Bankruptcy, to hear and determine and enter orders thereon, and any and all matters reserved to the Judge by the provisions of said Chapter X of the said Act, be, and they hereby are, referred to the said Frank W. Ingram, Referee in Bankruptcy, as special Master, generally, to hear and report; and it is further

Ordered that all matters referred to Frank W. Ingram, shall be initiated before him, and all petitions and applications referred to Frank W. Ingram, as Referee or special Master, except where all parties entitled to notice consent or where

otherwise provided in Chapter X of the said Act or by order of the court, shall be brought on for hearing by notice of motion to said debtor, all parties who have intervened generally herein, all parties who have been designated by the judge to receive notice, the party or parties, if any, against whom relief is sought, and all parties who have intervened specially herein with respect to the subject matter of the petition or application; that where any of the said parties has appeared in the proceeding by attorney, service upon such party shall be made by service upon his attorney of record; that service shall be made personally or by mail; that where service is made upon any of the said parties more than one thousand (1,000) miles from Carson City, Nevada, twenty (20) days' notice shall be given, where, upon any of the said parties more than four hundred (400) and less than one thousand (1,000) miles from Carson City, Nevada, ten (10) days' notice shall be given, and in all other cases five (5) days' notice shall be given; that all notices shall contain a brief statement of the relief sought by the petition or application and the time and place of hearing, but any party may waive notice or consent to shorten the time for service thereof; and it is further

Ordered that the special master shall report upon all matters brought before him, and his report shall contain a form of order recommended by the special master to be made and entered on such report; that when the report of the special master is upon a contested matter, the special master shall file the origi-

nal of such report with the clerk of this court and shall give notice of such filing to all parties who shall have appeared at the hearing before the special master on the matter to which such report relates, and, unless within ten (10) days from the filing of such report, written objections thereto shall be filed with the clerk and copies of such objections shall be served on all such parties, the report shall stand confirmed, and, in that event, or if the report of the special master is upon an uncontested matter, any party may submit to the judge acting in this proceeding, the order, if any, recommended by the special master to be made and entered on such report; that if timely objections to such report shall be filed and served, as above provided, any and all such parties may make application to the court for action upon the report and upon the objections thereto by motion on due notice to all other such parties; and it is further

Ordered that the special master may authorize the employment of stenographers for reporting and transcribing the proceeding before him, subject to the provisions of the said Act and the rules of this court; and it is further

Ordered that this court reserves the right and jurisdiction to make such orders amplifying, extending or limiting, or otherwise modifying this order as to the court may seem proper.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed March 22, 1950.

In the United States District Court for the
District of Nevada

In Reorganization Chapter X A-60-A

In the Matter of

LINCOLN MINING COMPANY, INC.,
Debtor.

PROPOSAL OF PLAN FOR THE REORGAN-
IZATION OF LINCOLN MINING COM-
PANY, INC., DEBTOR

John S. Halley and Morse & Graves, attorneys
for Lincoln Mining Company, Inc., Debtor, have
prepared and propose the annexed plan for the
reorganization of the said debtor.

Dated at Las Vegas, Nevada, June 26, 1950.

Respectfully submitted,

JOHN S. HALLEY, and
MORSE & GRAVES,

By /s/ HAROLD M. MORSE,

Attorneys for Lincoln Mining
Company, Inc.

[Endorsed]: Filed June 28, 1950, Referee.

[Title of District Court and Cause.]

PLAN OF REORGANIZATION LINCOLN MINING COMPANY, INC.

The above-named debtor proposes the following plan for reorganization:

I.

The capital stock of the debtor corporation is all common stock and is all owned by George W. Thiriot, Dean P. Thiriot, Wesley Koyen and Eva H. Koyen, each owning one-fourth of the outstanding capital stock; that none of the capital stock is owned by any other persons; that twenty-five per cent of the capital stock of said corporation has by action of the board of directors been designated treasury stock and has not been issued to anyone and remains in the treasury; that no public offering of the capital stock of said corporation has ever been made; that the capital stock was issued by said corporation to said named persons as consideration of the conveyance by them to the corporation of the assets of the said corporation, consisting of the mining property and the mining equipment and machinery and milling equipment and machinery, as set forth in the debtors' petition for reorganization.

II.

That there was no preferred stock issued by said corporation and there are no bond holders of said corporation; that there is no mortgage upon any of the property of said corporation, save and except

certain liens against specific property, which liens are evidenced by conditional sales contracts.

III.

That said corporation has been engaged in operating the mining property set forth in its petition, in the North Tempiute Mining District, Lincoln County, Nevada; that the chief mineral ore being extracted from said claims is scheelite or tungsten, and that said corporation has a contract to sell all concentrates produced from the mining and production of said ore from said mine, said contract being effective to the 1st day of February, 1951; that the indebtedness incurred by the said corporation was incurred primarily for the purchase and installation of equipment on the premises, both in the mine and at the mill, and development work for developing new bodies of ore.

IV.

That the following is a list of the obligations of said corporation which have priority under the law:

(A) Claim of the United States for

Taxes	\$ 47.74
-------------	----------

(B) The following claims are secured:

- | | |
|---|----------|
| 1. Atolia Mining Company, Pacific Mining Company, and P. R. Bradley, Jr., Trustee, Crocker Bank Bldg., San Francisco, California..... | 6,000.00 |
| Contract on Conditional Sale | |

2. Atolia Mining Company, Pacific Mining Company, and P. R. Bradley, Jr., Trustee, Open Account..... 1,700.00
3. Bank of Nevada, Las Vegas, Nevada, Installment contract—One KVA International Diesel Power Unit, Balance..... 2,750.00

(C) The following claims are unsecured:

1. Foster Smith, Mina, Nevada..... 1,365.00
2. Kavanaugh Bros., Tonopah, Nev.... 250.00
3. Hodges Cook Mercantile Co., Pioche, Nevada 448.80
4. Walter Ray, Caliente, Nevada..... 820.74
5. Van Voriees, Bishop, California.... 400.00
6. Clark Co., Wholesale Merc. Co., Las Vegas, Nevada..... 206.77
7. Lincoln County, Nev., General Taxes, 1949 555.00
8. Thiriot Bros., Hiko, Nevada,
Amount undetermined

(Dean P. Thiriot is a member of Thiriot Bros., and also owns a one-quarter interest in the capital stock of said corporation.)

9. Wesley Koyen, Hiko, Nevada,
Amount undetermined

(Wesley Koyen also is a stock-

holder in said corporation and owns a one-quarter interest therein.)

10. General Labor claims, more than six months past due, Approximately...	5,000.00
11. Gottfredson's, Caliente, Nevada....	100.00
12. Union Assay Office, Salt Lake City, Utah	3.00
13. Bellville, Mina, Nevada.....	23.65
14. Ray Orr, Pioche, Nevada.....	22.00
15. Public Utility, Caliente, Nevada....	40.50
16. Ely Valley Mine, Pioche, Nevada...	6.00
17. Combine Metal, Pioche, Nevada....	27.90
18. Nevada Unemployment Compensation	35.80
	8.82
19. Standard Oil Co., Bishop, California	35.65
20. Standard Oil Co., Tonopah, California	41.31
21. Wesley Koyen	57.00

That on or about the 1st day of April, 1950, the Board of Directors of said corporation by unanimous vote passed a resolution that Wesley Koyen, Hiko, Nevada, be appointed general manager of said corporation while said corporation was in reorganization; that since that date he has acted and is now acting as general manager of said corporation.

VI.

That said corporation be authorized to borrow up to \$7500.00 as for working capital and to pledge the real and personal property of said corporation as security therefor, and which said pledge shall have priority over all unsecured claims, and that from said loan the said general manager be authorized to negotiate with the Atolia Mining Company, being the chief creditor having a secured claim on certain equipment owned by the said corporation, for a compromise of their claim, and to pay off the balance found due said corporation.

VII.

That the corporation continue its mining and milling operations, mine its ore, reduce the same through its mill to concentrates and sell said concentrates under its sales contract, and from the proceeds therefrom to use 75% of the net proceeds to pay the debts of said corporation, and that 25% of the net proceeds be retained by said corporation as operating capital and for a reserve.

VIII.

That the general manager, Wesley Koyen, be paid the sum of \$10.00 per day for his work and labor in mining and as being general manager.

IX.

That John S. Halley, Reno, Nevada, and Morse & Graves, Las Vegas, Nevada, be attorneys for the debtors while the corporation is under reorganization.

X.

That the general manager of said corporation, Wesley Koyen, estimates that, with the supplying of the working capital as above specified so that the milling operations may be continued, as a result of the mining and milling operations of said corporation during reorganization, a net return of approximately \$750.00 per month will be available to pay off the indebtedness of said corporation.

XI.

That all costs of administration and all claims filed and allowed be duly paid, and that then these proceedings be dismissed and the property then be returned to the corporation.

Respectfully submitted,

LINCOLN MINING
COMPANY, INC.

By /s/ WESLEY KOYEN,
General Manager.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR DEBTOR
TO ITEMIZE AND NAME CREDITORS
LISTED IN PLAN OF REORGANIZATION
AS LIST REQUIRED AND ORDERED
UNDER SECTION 163 OF BANKRUPTCY
ACT

At Reno, in said district, this 29th day of June,
1950.

It appearing in response to this Court's order of

April 13th, 1950, and extension of time heretofore granted that above-named debtor has included in its proposed plan of reorganization the names of its stockholders and the list of creditors required under Section 163 of the bankruptcy act except for item 10 in paragraph IV of such plan listed as "10 General Labor Claims more than six months past due, approximately \$5,000.00": that this listing is insufficient and should show the name, the address, period worked, occupation and amount of each claim. It is therefore

Ordered that the debtor shall submit an amendment to its schedule of debts giving the name, address, period worked, occupation and amount of claim for each creditor generally grouped in item 10 of paragraph IV of debtor's proposed plan of reorganization within 10 days and when such amendment is filed with the Referee undersigned this will be considered as the filing of the list of creditors and their amount claimed under Section 163 of the Bankruptcy Act ordered on April 13, 1950.

/s/ FRANK W. INGRAM,

Referee in Bankruptcy.

[Endorsed]: Filed June 29, 1950, Referee.

[Endorsed]: Filed June 30, 1950, U.S.D.C.

[Title of District Court and Cause.]

SUPPLEMENT TO PROPOSAL OF PLAN FOR
REORGANIZATION OF LINCOLN MIN-
ING COMPANY, INC., DEBTOR

John S. Halley and Morse & Graves, attorneys for Lincoln Mining Company, Inc., Debtor, have prepared and submit the annexed supplement to plan for reorganization of the said debtor.

Dated at Las Vegas, Nevada, this 7th day of July, 1950.

Respectfully submitted,

JOHN S. HALLEY, and
MORSE & GRAVES,
By HAROLD M. MORSE,
Attorneys for Lincoln Mining
Company.

In the Matter of
Lincoln Mining Company, Inc.,
Debtor.

In Reorganization
Chapter X
A-60-A

SUPPLEMENT TO PLAN OF REORGANIZATION WITH ITEMIZATION OF
CREDITORS HERETOFORE GROUPED AS ITEM 10 OF PARAGRAPH IV
OF PROPOSED PLAN OF REORGANIZATION

G. McGuire Pierce vs.

Name and Address	Dates Worked	Occupation	Wages less Board	Balance
Frank Belt, Las Vegas, Nev.	10/ 4/48 to 3/ 4/49	Miner	\$ 403.54 \$200.00	\$203.54
O. H. Gulack, Hiko, Nev.	11/ 5/48 to 3/ 5/49	Construction	1,113.11 300.00	813.11
W. Brady, Hiko, Nev.	1/ 1/49 to 1/31/49	Mill Helper	39.50 39.50	.....
W. I. Tinkle, Hiko, Nev.	5/ 9/49 to 7/ 1/49	Mine Helper	179.92 66.92	113.00
Wm. Showalter, Hiko, Nev.	8/ 5/49 to 12/23/49	Mill Supt.	1,082.95 425.43	657.52
Anselmo Gomo, Hiko, Nev.	8/11/49 to 8/21/49	Miner	19.80	19.80
J. W. Moore, Hiko, Nev.	8/12/49 to 8/27/49	Mine Helper	33.40 33.40	.....
Robert Koyen, Hiko, Nev.	7/ 3/49 to 8/ 6/49	Mine Helper	184.79	184.79
Grant Wadsworth, Panaca, Nev.	8/26/49 to 10/ 1/49	Truck Driver	338.64	338.64
Alvin Kaze, Hiko, Nev.	8/29/49 to 10/27/49	Mine Helper	279.34 45.75	233.59
Orland McDowell, Tonopah, Nev.	9/16/49 to 10/27/49	Mill Helper	228.35 65.00	163.35
Charles Priestner, Tonopah, Nev.	9/16/49 to 10/27/49	Mine Helper	260.73 74.06	186.67
Carl Sly, Hiko, Nev.	9/16/49 to 10/16/49	Miner	128.36 16.38	111.98
Elton Chaffin, Hiko, Nev.	11/14/49 to 11/27/49	General Work	18.42 3.00	15.42
Bill Dinsmore, Hiko, Nev.	11/19/49 to 11/26/49	Miner	18.90 18.90	.....
Frank Kane, Hiko, Nev.	12/ 5/49 to 12/19/49	General Work	5.07 5.07	.....
Charles Hasking, Hiko, Nev.	12/ 8/49 to 12/19/49	General Work	34.46 34.46	.....
Total.....				\$3,041.41

[Title of District Court and Cause.]

ORDER FOR HEARING OF OBJECTIONS OR
AMENDMENTS TO PLAN PROPOSED BY
DEBTOR IN POSSESSION UNDER SEC-
TION 170 OF BANKRUPTCY ACT AND
TO CONTINUANCE AND TO HEARING
OBJECTIONS, IF ANY, TO THE CON-
TINUANCE OF THE DEBTOR IN POS-
SESSION UNDER SECTION 162 OF SAID
ACT

At Reno, in said District, on the 25th day of July,
1950.

It appearing to the Court that the Lincoln Mining Company, a corporation, did on the 22nd day of March, 1950, file its petition for corporate reorganization under Chapter X of the Bankruptcy Act; that thereafter and on the same date this Court made its order finding that such petition was filed in good faith and approving the same; Thereafter and on the same date this Court made its order continuing the Lincoln Mining Company, Inc., in possession, restraining certain creditors from removing certain personal property from the debtor's possession; Thereafter and on the same date the undersigned District Judge made a general order of reference to Frank W. Ingram as Referee in Bankruptcy and as Special Master; Thereafter this Court made its order instructing the Lincoln Mining Company to file plan of reorganization and continuing time of hearings thereon and the Referee and Special Master filed orders requiring said

debtor to furnish a schedule of its creditors by class and of its stockholders; Thereafter and on the 30th day of June, 1950, the debtor filed a proposed plan of reorganization and completed such filing on the order of the Referee on July 14th and an opportunity be given creditors and stockholders to object to the continuance of the debtor in possession as provided in Section 162 of the Bankruptcy Act, being Section 562, Title 11, U.S.C.A., and an opportunity for the creditors and stockholders to present objections and amendments to the plan of reorganization heretofore submitted by the debtor corporation; it is therefore

Ordered that September 1, 1950, at 9:30 a.m., United States District Court Room, Post Office Building, Las Vegas, Nevada, be and it hereby is fixed as the time and place for the hearing of objections to the continuance of said debtor in possession as provided in Section 162 of the Bankruptcy Act, being Section 562 of Title 11, U.S.C.A.; it is further

Ordered that September 1, 1950, at 9:30 a.m., United States Court Room, Las Vegas, Nevada, be and it hereby is fixed as the time and place for a hearing on the plan of the debtor for reorganization and for a consideration of any objections or amendments thereto; it is further

Ordered that on or before the 15th day of August, 1950, the said debtor shall, at the expense of the estate, prepare, make oath to and file in this Court (a) Schedule of its property, showing the location, quantity and money value thereof; (b) A summary of its operations since the filing of the petition and

the order of this Court continuing debtor in possession on March 22, 1950, showing its receipts and disbursements, to whom paid and the services performed by such payees; it is further

Ordered that the said debtor be and it hereby is directed to give notice of the hearing fixed in this order at least thirty (30) days prior to September 1, 1950, by mailing such notices to its creditors and stockholders as the same may appear upon its records or may be otherwise shown to the Secretary of the Treasury at Washington, District of Columbia, by mailing two copies of such notice to the Securities and Exchange Commission by registered first class mail, postage prepaid, addressed to it at Washington, District of Columbia, or such other place as the Securities and Exchange Commission shall designate by written notice filed in the proceedings and served upon the parties to the proceedings and by publication in the Las Vegas Review Journal, a newspaper published and having a general circulation in Las Vegas, Nevada, for one publication on or before the first day of August, 1950. Such notice to be in the following form: Notice of hearing under Sections 161 and 170 of the Bankruptcy Act, in the District Court of the United States for the District of Nevada, in the matter of Lincoln Mining Company, Inc., debtor, in proceedings for reorganization of a corporation, A-60-A. To all creditors and stockholders and other parties in interest, notice is hereby given that on the 22nd day of March, Lincoln Mining Company, Inc., the above-named debtor, filed a petition in this Court, praying that

proceedings be heard under Chapter X of the Act of Congress relating to bankruptcy and that on March 22, 1950, an order was entered by said Court approving said petition and continuing said debtor in possession. Notice is further given that September 1, 1950, at 9:30 a.m., United States District Court Room, United States Post Office Building, city of Las Vegas, state of Nevada, has been fixed as the time and place for the hearing of objections to the continuance of said debtor in possession. Notice is further given that September 1, 1950, has been fixed as the time and place for the hearing of objections and amendments to the debtor's proposed plan of reorganization. This notice is accompanied by copy of a plan of its reorganization, filed and proposed by said debtor. Notice is further given that said hearing may be adjourned from time to time without notice to said creditors, stockholders, or other parties of interest other than the announcement of the adjourned date or dates at the hearings. Being order of the Court, dated at Reno, Nevada, July 25, 1950.

LINCOLN MINING
COMPANY, INC.

By,
President Debtor.

Affidavit of mailing and proof of publication in the above shall be furnished Referee in Bankruptcy. It is further

Ordered that the hearings hereinbefore fixed by this order shall be heard by the Referee and Special

Master as provided in the general reference order of March 22nd to him as Referee and Special Master; it is further

Ordered that this Court reserves full right and jurisdiction to make at any time and from time to time such orders for the purpose of vacating, amplifying, extending, limiting, or otherwise modifying this order as the Court shall deem proper.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed July 27, 1950.

[Title of District Court and Cause.]

ORDER APPROVING PLAN OF
REORGANIZATION

At Reno, in said district, this 26th day of September, 1950.

A hearing having been held on the 1st day of September, 1950, before the Referee and Special Master, Frank W. Ingram, pursuant to the order of this Court, dated the 25th day of July, 1950, on the plan for the reorganization of the Lincoln Mining Company, Inc., the above-named debtor, prepared and filed herein by the said debtor, and for the consideration of any objections which might be made, or of such amendments or plans as might be proposed by said debtor or by any creditor or stockholder herein, and notice of said hearing hav-

ing been given as required by Section 171 of the Act of Congress relating to bankruptcy, and in accordance with the said order of July 25, 1950, and the Referee having proposed an amendment to the plan which the creditors and debtor accepted and the proposed plan having been forwarded to the Security Exchange Commission and the Referee having received advice that such commission was not participating in the case because of the absence of any public investor interest and it further appearing that the scheduled indebtedness of the debtor does not exceed \$25,000 and it will not be necessary for an examination and report on the plan as provided in Section 172 of the Bankruptcy Act, and the report and recommendations of the Referee and Special Master having been received and filed on the 22nd day of September, 1950.

Now upon the plan for the reorganization of Lincoln Mining Company, Inc., said debtor prepared and filed by said debtor, and the amendments thereon proposed at the meeting of creditors held September 1, 1950, and accepted by the debtor at such meeting, and the report and recommendations of the Referee and Special Master with his findings, which report and findings the Court adopts and approves as the summary and findings of this Court, and the Court being of the opinion that said plan, as amended, complies with the provisions of Section 216 of the said Act, and is fair and equitable, and feasible and the Court having adopted the report and findings of the Referee and Special Master as its opinion thereon; it is

Ordered that the said plan for the reorganization of the Lincoln Mining Company, Inc., the above-named debtor, prepared and filed by the said debtor, as amended, be, and it hereby is, approved; and it is further

Ordered that November 10, 1950, be, and it hereby is, fixed as the last day of a time within which creditors and stockholders herein affected by the said plan may accept the same in writing filed with Frank W. Ingram, Referee and Special Master, herein, 325 Ridge Street, Reno, Nevada, and such filing with such Referee and Special Master shall be deemed filing in this Court, and the creditors and stockholders are advised that for the purpose of determining the required amount for acceptance of the plan under Section 179 of said Act that their claims must be filed and allowed prior to the 10th day of November, 1950, and it is further

Ordered that the report of the Referee and Special Master is adopted by the Court as the summary of the plan and opinion of the Court and annexed hereto marked Exhibit A and made a part hereof, and the same be, and it hereby is, approved as the summary required by Section 175 (1) of the said Act, and the opinion of the Court, it is further

Ordered that within 10 days after the entry of this order, the debtor shall transmit by mail to each creditor and stockholder of the said debtor who is affected by the said plan, at his address appearing upon the debtor's books or otherwise known to him, a copy of said plan as amended, together with a copy of the summary thereof and opinion of the

Court herein approved, together with a copy of this order, a copy of the notice hereto annexed, marked Exhibit B and made a part thereof, and appropriate forms for acceptance from among the forms hereto annexed, marked Exhibits C and D and made a part hereof, which the Court deems desirable for the information of creditors and stockholders herein.

/s/ ROGER T. FOLEY,
District Judge.

EXHIBIT A

[Title of District Court and Cause.]

REPORT OF REFEREE AND SPECIAL MASTER ON HEARINGS ON OBJECTIONS OF AMENDMENTS TO PLAN UNDER SECTION 170 AND FOR CONTINUANCE OF DEBTOR IN POSSESSION UNDER SECTION 162 OF BANKRUPTCY ACT

In compliance with the orders of the Court dated the 25th day of July, 1950, and upon notice to all creditors and stockholders as required in such order the Referee and Special Master held hearings for the purpose of hearing any objections or amendments of the plan proposed by the debtor in possession under Section 170 and to the continuance of the debtor in possession under Section 162 of the Act, at Las Vegas, Nevada, on the 1st day of September, 1950. The debtor being represented by his attorney and there being certain creditors present

at such meeting, transcript of which was taken by the Referee and Special Master, summary of which is reported herewith.

1. At said hearing there was no objections to the debtor remaining in possession.

2. Modifications of the plan were approved by creditors and representative of the debtor present, such modifications and changes are as follows:

(a) Page 2 of plan, Paragraph IV b (3), Bank of Nevada, Las Vegas, Nevada, figure changes from \$2750.00 to \$2250.00.

(b) Fourth page of the plan amended by striking out all of the last two sentences in paragraph 7 reading as follows: "paying off first the secured claims, and secondly, the unsecured claims; and that 25% of the net proceeds be retained by said corporation as operating capital and for a reserve."

(c) Striking out all of paragraph 9 of the proposed plan and renumbering paragraphs 10 and 11 accordingly.

3. That with the modifications and amendments above referred to the plan proposes to pay the creditors prior to any claims of the stockholders and that upon payment of all of such claims and the costs of administration the property should then be returned to the corporation.

4. The Security and Exchange Commission have indicated by letter to the Referee and Special Master that there is no public interest involved in the stock distribution of this company and that they

would not be interested or participate in the hearings.

5. There is a petition pending for the reclamation of certain mining machinery by the Atilio Mining Company against which an answer has been filed claiming substantial off-sets against such claim but that the plan proposes to borrow sufficient money with which to absorb and pay off any pending fund to be due Atilio Mining Company.

6. That since the debtor has filed petition under reorganization they have devoted their energies to perfecting a flow-sheet and mining operation which, according to the testimony at the hearing, will permit an economically sound operation, particularly in view of the increased price of tungsten W03 concentrates and the need for such material in the war effort. Further testimony disclosed that the National Resources Board proposes contracts for delivery of tungsten for a three year period at a substantial increase in price.

7. That the creditors represented at such hearing expressed the opinion that a continuance of the operation by the debtor was to be preferred to liquidation of the assets of the corporation at this time.

8. That the plan is feasible, economical and complies with the requirements of Section 221, being Section 621 U.S.C.A. That it is fair and equitable and that no priority payments to creditors is involved.

9. That the schedule of property filed by the

debtor estimates the value of the property at \$165,000.00, secured claims total \$9950.00 on machinery, tax claim by United States \$47.74 and Unemployment Compensation claims of around \$100.00 yet to be determined, and unsecured claims in the neighborhood of \$11,000.00

Testimony at the hearing indicated that there should be an income of at least \$1,000.00 a month to be applied to the unsecured claims and that the secured claimants would be taken care of by refinancing or loans requested under the plan of reorganization.

The Referee and Special Master, therefore recommends the approval of the attached order and certifies that he has sent signed a copy of this report to the debtor with instructions that unless objections to such order is made within ten days the Court will approve the same as provided in the order of reference to the Referee and Special Master, filed March 22, 1950.

/s/ FRANK W. INGRAM,

Referee and Special Master.

I certify that a copy of the foregoing report with proposed order attached was mailed to the Lincoln Mining Company, c/o Morse and Graves, attorneys, 121 Fremont St., Las Vegas, this 21st day of September, 1950.

.....,
Clerk.

[Endorsed]: Filed September 22, 1950.

EXHIBIT B

[Title of District Court and Cause.]

NOTICE TRANSMITTED UNDER
SECTION 175

To All Creditors and Stockholders of Lincoln Mining Company, Inc., Notice Is Hereby Given

1. On October, 1950, this Court approved a plan for the reorganization of Lincoln Mining Company, Inc., the above-named debtor, prepared and filed by the debtor in possession.

2. In accordance with said order, there is transmitted

(a) A copy of said plan, as amended, together with a copy of the summary thereof approved by the judge.

(b) A copy of the opinion of the Judge approving said plan (Referee's report approved as summary and opinion).

(c) Appropriate forms for the acceptance of said plan.

3. By order of October, 1950, acceptances may be filed in writing by all creditors and stockholders affected by the said plan on or before the 10th day of November, 1950, with Frank W. Ingram, Referee and Special Master herein, at his office, 325 Ridge Street, Reno, Nevada.

4. Appropriate forms for acceptance of said plan are enclosed for the convenience of creditors

and stockholders, if they desire to accept plan. Other forms may be obtained from the undersigned upon request.

5. Acceptances will be effective only as to proofs of claim of creditors and the interests of stockholders which have been filed and allowed herein.

By Order of the Court

Dated, Las Vegas, Nevada, October, 1950.

LINCOLN MINING COMPANY,
INC.,

By GEORGE W. THIRIOT,
President.

c/o MORSE AND GRAVES,
Attorneys,

121 Fremont Street, Las
Vegas, Nevada.

EXHIBIT C

[Title of District Court and Cause.]

ACCEPTANCE BY HOLDER OF COMMON STOCK

The undersigned, the holder of shares of the Common Stock of Lincoln Mining Company, Inc., the above-named debtor, whose proof of stock interest has been filed and allowed herein, hereby accepts the amended plan for the reorganization of Lincoln Mining Company, Inc., said debtor, ap-

proved by this Court under Section 174 of the Act of Congress relating to bankruptcy on October, 1950.

Dated, 1950.

.....,

Stockholder signs on this line.

.....,

Print or type name of stockholder on this line.

.....,

Print or type address.

.....,

City or State.

Certificate No.

Registered in name of

.....

.....

.....

.....

.....

.....

List all certificates of common stock. (If acceptance is executed by a trustee, attorney, executor, administrator, officer of a corporation or any other person acting in a representative capacity, submit evidence of authority of such person to act.)

EXHIBIT D

[Title of District Court and Cause.]

ACCEPTANCE BY HOLDER OF GENERAL
CLAIM

The undersigned, a creditor of Lincoln Mining Company, Inc., the above-named debtor, whose claim in the amount of

..... (\$.....)

State amount here

has been filed and allowed herein, hereby accepts the amended plan for the reorganization of Lincoln Mining Company, Inc., said debtor, approved by this Court under Section 174 of the Act of Congress relating to bankruptcy on October, 1950.

Dated, 1950.

.....,

Signature of individual or
name of corporation.

By..... Title.....

Print name.....

Street address.....

City and State

(If acceptance is executed by a trustee, attorney, executor, administrator, guardian, officer of a corporation or any other person acting in a representative capacity, proper evidence of the authority of such person to act must be submitted.)

[Title of District Court and Cause.]

PLAN OF REORGANIZATION
LINCOLN MINING COMPANY, INC.

The above-named debtor proposes the following plan for reorganization:

I.

The capital stock of the debtor corporation is all common stock and is all owned by George W. Thiriot, Dean P. Thiriot, Wesley Koyen and Eva H. Koyen, each owning one-fourth of the outstanding capital stock; that none of the capital stock is owned by any other persons; that twenty-five per cent of the capital stock of said corporation has by action of the Board of Directors been designated treasury stock and has not been issued to anyone and remains in the treasury; that no public offering of the capital stock of said corporation has ever been made; that the capital stock was issued by said corporation to said named persons as consideration of the conveyance by them to the corporation of the assets of the said corporation, consisting of the mining property and the mining equipment and machinery and milling equipment and machinery, as set forth in the debtors' petition for reorganization.

II.

That there was no preferred stock issued by said corporation and there are no bond holders of said corporation; that there is no mortgage upon any of

the property of said corporation, save and except certain liens against specific property, which liens are evidenced by conditional sales contracts.

III.

That said corporation has been engaged in operating the mining property set forth in its petition, in the North Tempiute Mining District, Lincoln County, Nevada; that the chief mineral ore being extracted from said claims is scheelite or tungsten, and that said corporation has a contract to sell all concentrates produced from the mining and production of said ore from said mine, said contract being effective to the 1st day of February, 1951; that the indebtedness incurred by the said corporation was incurred primarily for the purchase and installation of equipment on the premises, both in the mine and at the mill, and development work for developing new bodies of ore.

IV.

That the following is a list of the obligations of said corporation which have priority under the law:

(a) Claim of the United States
for Taxes.....\$ 47.74

(b) The following claims are secured:

1. Atolia Mining Company, Pacific Mining Company, and P. R. Bradley, Jr., Trustees, Crocker Bank Bldg., San Francisco, California. 6000.00
Contract on conditional sale.

2. Atolia Mining Company, Pacific Mining Company, and P. R. Bradley, Jr., Trustee, 1700.00
 Open account.

3. Bank of Nevada, Las Vegas, Nevada. Installment Contract—One KVA International Diesel Power Unit, Balance 2250.00

(c) The following claims are unsecured:

1. Foster Smith, Mina, Nevada.... 1365.00
2. Kavanaugh Bros., Tonopah, Nev. 250.00
3. Hodges Cook Mercantile Co., Pioche, Nevada 448.00
4. Walter Ray, Caliente, Nevada.. 820.74
5. Van Voriees, Bishop, California 400.00
6. Clark Co., Wholesale Merc. Co., Las Vegas, Nev..... 206.77
7. Lincoln County, Nevada, General Taxes, 1949 555.00
8. Thiriot Bros., Hiko, Nevada. Amount undetermined (Dean P. Thiriot is a member of Thiriot Bros., and also owns a one-quarter interest in the capital stock of said corporation)
9. Wesley Koyen, Hiko, Nevada, Amount undetermined. (Wesley Koyen also is a stockholder in said corporation and owns a one-quarter interest therein)

10.	General Labor Claims, more than six months past due. Approximately	5000.00
11.	Gottfredson's, Caliente, Nevada	100.00
12.	Union Assay Office, Salt Lake City, Utah	3.00
13.	Bellville, Mina, Nevada.....	23.65
14.	Ray Orr, Pioche, Nevada.....	22.00
15.	Public Utility, Caliente, Nevada	40.50
16.	Ely Valley Mine, Pioche, Nevada	6.00
17.	Combine Metal, Pioche, Nevada	27.90
18.	Nevada Unemployment Compensation	35.80
		8.82
19.	Standard Oil Co., Bishop Calif.	35.65
20.	Standard Oil Co., Tonopah, Nev.	41.31
21.	Wesley Koyen	57.00

That on or about the 1st day of April, 1950, the Board of Directors of said corporation by unanimous vote passed a resolution that Wesley Koyen, Hiko, Nevada, be appointed general manager of said corporation while said corporation was in reorganization; that since that date he has acted and is now acting as general manager of said corporation.

VI.

That said corporation be authorized to borrow up to \$7500.00 as and for working capital and to pledge the real and personal property of said corporation as security therefor, and which said pledge

shall have priority over all unsecured claims, and that from said loan the said general manager be authorized to negotiate with the Atolia Mining Company, being the chief creditor having a secured claim on certain equipment owned by said corporation, for a compromise of their claim, and to pay off the balance found due said corporation.

VII.

That the corporation continue its mining and milling operations, mine its ore, reduce the same through its mill to concentrates and sell said concentrates under its sales contract, and from the proceeds to pay the debts of said corporation.

VIII.

That the general manager, Wesley Koyen, be paid the sum of \$10.00 per day for his work and labor in mining and as being general manager.

IX.

That the general manager of said corporation, Wesley Koyen, estimates that, with the supplying of the working capital as above specified so that the milling operations may be continued, as a result of the mining and milling operations of said corporation during reorganization, a net of approximately \$750.00 per month will be available to pay off the indebtedness of said corporation.

X.

That all costs of administration and all claims filed and allowed be duly paid, and that then these proceedings be dismissed and the property then be returned to the corporation.

Respectfully submitted,

LINCOLN MINING COMPANY,
INC.,

By WESLEY KOYEN,
General Manager.

[Title of District Court and Cause.]

SUPPLEMENT TO PROPOSAL OF PLAN FOR
REORGANIZATION OF LINCOLN MIN-
ING COMPANY, INC., DEBTOR

John S. Halley and Morse & Graves, attorneys for Lincoln Mining Company, Inc.; George W. Thiriot, President, Debtor, have prepared and submit the annexed supplement to plan for reorganization of the said debtor.

Dated at Las Vegas, Nevada, this 7th day of July, 1950.

Respectfully submitted,

JOHN S. HALLEY, and
MORSE & GRAVES,
By HAROLD M. MORSE,

Attorneys for Lincoln Mining
Company.

SUPPLEMENT TO PLAN OF REORGANIZATION WITH ITEMIZATION OF
CREDITORS HERETOFORE GROUPED AS ITEM 10 OF PARAGRAPH IV
OF PROPOSED PLAN OF REORGANIZATION

Name and Address	Dates Worked	Occupation	Wages less Board	Balance
Frank Belt, Las Vegas, Nev.	10/ 4/48 to 3/ 4/49	Miner	\$ 403.54	\$203.54
O. H. Gulack, Hiko, Nev.	11/ 5/48 to 3/ 5/49	Construction	1,113.11	813.11
W. Brady, Hiko, Nev.	1/ 1/49 to 1/31/49	Mill Helper	39.50	39.50
W. I. Tinkle, Hiko, Nev.	5/ 9/49 to 7/ 1/49	Mine Helper	179.92	113.00
Wm. Showalter, Hiko, Nev.	8/ 5/49 to 12/23/49	Mill Supt.	1,082.95	657.52
Anselmo Gomo, Hiko, Nev.	8/11/49 to 8/21/49	Miner	19.80	19.80
J. W. Moore, Hiko, Nev.	8/12/49 to 8/27/49	Mine Helper	33.40	33.40
Robert Koyen, Hiko, Nev.	7/ 3/49 to 8/ 6/49	Mine Helper	184.79	184.79
Grant Wadsworth, Panaca, Nev.	8/26/49 to 10/ 1/49	Truck Driver	338.64	338.64
Alvin Kaze, Hiko, Nev.	8/29/49 to 10/27/49	Mine Helper	279.34	233.59
Orland McDowell, Tonopah, Nev.	9/16/49 to 10/27/49	Mill Helper	228.35	163.35
Charles Priestler, Tonopah, Nev.	9/16/49 to 10/27/49	Mine Helper	260.73	186.67
Carl Sly, Hiko, Nev.	9/16/49 to 10/16/49	Miner	128.36	111.98
Elton Chaffin, Hiko, Nev.	11/14/49 to 11/27/49	General Work	18.42	15.42
Bill Dinsmore, Hiko, Nev.	11/19/49 to 11/26/49	Miner	18.90	18.90
Frank Kane, Hiko, Nev.	12/ 5/49 to 12/19/49	General Work	5.07	5.07
Charles Hasking, Hiko, Nev.	12/ 8/49 to 12/19/49	General Work	34.46	34.46
Total.....				\$3,041.41

Morse & Graves
Law Offices
P. O. Box 791
121 Fremont Street
Las Vegas Nevada

September 25, 1950

Hon. Frank W. Ingram
Referee In Bankruptcy
325 Ridge Street
Reno, Nevada

Re: Lincoln Mining Company
A-60-A

Dear Frank:

Thank you for your letter of September 21, 1950, with enclosures.

We have no objections to the form or substance of the Report of Referee and Special Master, and the proposed order approving the plan of reorganization. When we receive word that the court has executed the order, we will then have the matters mimeographed and transmitted to the creditors and stockholders, as you suggest.

We enclose herewith our check in the sum of \$10.00 for filing the Answer to Petition of Atolia Mining Company to reclaim Property, in accordance with your letter of September 19, 1950.

Sincerely yours,

MORSE & GRAVES,

By /s/ HAROLD M. MORSE,

HMM/ML

Enclosure

[Endorsed]: Filed September 26, 1950.

[Title of District Court and Cause.]

PROPOSAL OF PLAN FOR REORGANIZATION OF LINCOLN MINING COMPANY, INC., DEBTOR

G. W. Thiriot, President of Lincoln Mining Company, Inc., Debtor, have prepared and propose the annexed plan for the reorganization of the said debtor. This proposal to supersede all previous proposals or contracts made and signed by me.

Dated at Hiko, Nevada, Oct. 31, 1950.

Respectfully submitted,

/s/ G. W. THIRIOT,

President of Lincoln Mining
Company, Inc.

PLAN OF REORGANIZATION
LINCOLN MINING COMPANY, INC.

The above-named debtor proposes the following plan for reorganization:

I.

The capital stock of the debtor corporation is all common stock and is all owned by George W. Thiriot, Dean P. Thiriot, Wesley Koyen and Eva Koyen, each owning one-fourth of the outstanding capital stock; that none of the capital stock is owned by any other persons; that twenty-five per cent of the capital stock of said corporation has by action of the board of directors been designated treasury

stock and has not been issued to anyone and remains in the treasury; that no public offering of the capital stock of the corporation has ever been made; that the capital stock was issued by said corporation to said named persons as consideration of the conveyance by them to the corporation of the assets of the said corporation, consisting of the mining property and the mining equipment and machinery and milling equipment and machinery, as set forth in the debtor's petition for reorganization.

II.

That there was no preferred stock issued by said corporation and there are no bond holders of said corporation; that there is no mortgage upon any of the property of said corporation, save and except certain liens against specific property, which liens are evidenced by conditional sales contracts.

III.

That said corporation has been engaged in operating the mining property set forth in its petition, in the North Tempiute mining District, Lincoln County, Nevada; that the chief mineral ore being extracted from said claims is Scheelite or Tungsten, and that said corporation indebtedness was incurred primarily for the purchase and installation of equipment on the premises, both in the mine and mill and development work for developing new bodies of ore.

IV.

That the following is a list of the obligations of said corporation which have priority under the law:

(A) Claim of the United States for
Taxes\$ 47.74

(B) The following claims are secured:

1. Atolia Mining Company, Pacific Mining Co. and P. R. Bradley, Jr., Trustee, Crocker Bank Bldg., San Francisco, Calif. Conditional sale contract..... 6,000.00
2. Atolia Mining Co. Open Acct..... 1,700.00
3. Bank of Nevada, Las Vegas, Nev. Installment contract Diesel Unit..... 2,750.00

(c) The following claims are unsecured:

1. Foster Smith, Mina, Nev.....\$1,365.00
2. Kavanaugh Bros., Tonopah, Nev.... 250.00
3. Hodges Cook Merc., Pioche, Nev... 448.80
4. Walter Ray, Caliente, Nev..... 820.74
5. Van Voriees, Bishop, Calif..... 400.00
6. Clark County Wholesale Merc., Las Vegas, Nev. 206.77
7. Lincoln County, Genl. Taxes, 1949. 555.00
8. Thiriot Brothers, Hiko, Nevada....
9. Wesley Koyen, Hiko, Nevada.....
10. G. W. Thiriot, Hiko, Nevada.....
11. Labor Claims Approx..... 5,000.00
12. Gottfredson's Merc., Caliente, Nev... 100.00

13. Union Assay Office, Salt Lake City Utah	3.00
14. Bellville, Mina, Nev.	23.65
15. Roy Orr, Pioche, Nev.	22.00
16. Public Utilities, Caliente, Nev.....	40.50
17. Combine Metals, Pioche, Nev.	27.90
18. Ely Valley Mines, Pioche, Nev.	6.00
19. Nevada Unemployment	35.80
	8.82
20. Standard Oil Co., Bishop, Calif.....	35.65
21. Standard Oil Co., Tonopah, Nevada	41.31
22. Wesley Koyen, Hiko, Nevada	57.00

V.

Mr. George McGuire Pierce, 6057 Maryland Drive Los Angeles, California 36, makes the proposition to pay off the indebtedness of Lincoln Mining Company, Inc., in return for a bond and lease on the property, buildings, machinery, etc., for a period of ten (10) years. A total purchase price of \$150,000.00 payable from royalties at the rate of 10% on net returns to apply on purchase price. A contract to be worked out and executed if sanctioned by the court.

VI.

Mr. Pierce will place a Bond in Escrow until a decision is rendered in the suit against Atolia Mining Company.

VII.

We ask that the Honorable Court grant this request. That all costs of administration and all

claims filed and allowed be duly paid, and that then these proceedings be dismissed and the property then be returned to the corporation.

Respectfully submitted,

/s/ G. W. THIRIOT,

President, Lincoln Mining
Company, Inc.

[Endorsed]: Filed November 4, 1950. Referee.

[Endorsed]: Filed November 6, 1950, U.S.D.C.

In the District Court of the United States of
America in and for the District of Nevada

In Reorganization
Chapter X A-60-A

In the Matter of

LINCOLN MINING COMPANY, INC.,
Debtor.

ORDER

It appearing that G. W. Thiriot, President of Lincoln Mining Company, Inc., and holder and owner of fifty per cent (50%) of the capital stock of said company, has filed a proposal for a plan of reorganization other than the plan heretofore approved on the 26th day of September, 1950; that November 10, 1950, has heretofore been fixed as the last day of a time within which creditors and stockholders affected by said plan may accept the same in writing,

Now Therefore, It Is Hereby Ordered that the new plan proposed by G. W. Thiriot, President of Lincoln Mining Company, Inc., be considered and treated as a modification of the plan heretofore approved September 26, 1950, and the Court hereby orders such new plan to be filed as such modification, and hereby fixes the 21st day of November, 1950, at 9:30 a.m. as the time, and the courtroom of the United States District Court at Las Vegas, Nevada, as the place for the consideration of such new plan or modification and for the hearing of objections thereto.

Dated: This 6th day of November, 1950.

/s/ ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed November 6, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING OF
CLAIMS AND ACCEPTANCES AND FOR
HEARING OBJECTIONS TO ALTERA-
TION AND MODIFICATION OF PLAN
AND FOR CONFIRMATION OF SUCH
ALTERED PLAN AND FOR NOTICES OF
HEARINGS THEREON

At Reno, in said District, this 6th day of November, 1950.

It appearing to the Court that the District Judge

did on the 26th day of September, 1950, enter his Order approving plan of reorganization of above-named debtor, and that hearing on such plan was held at Las Vegas, Nevada, on September 1, 1950, and report approved and notices of time set for acceptance of plan by creditors, and stockholders as November 10, 1950; it further appearing that on the 6th day of November, 1950, G. W. Thiriot, president of the debtor corporation, filed a new proposed plan of reorganization which the Judge of this Court ordered filed and treated as a modification of the plan heretofore approved September 26th, 1950, and fixed the 21st day of November, 1950, at 9:30 a.m. as the time and the Court Room of the United States District Court at Las Vegas, Nevada, as the place for consideration of such new plan or modification and for hearing of objections thereto, and it further appearing that additional time should be given to creditors and stockholders to file their claims and acceptances of the plan as altered and modified, now therefore it is

Ordered that a hearing on the plan as modified and altered shall be held November 21, 1950, 9:30 a.m., Courtroom, United States District Court, Post Office Building, Las Vegas, Nevada, to hear objections, if any, to the altered plan, it is

Ordered that creditors and stockholders shall be given until November 18, 1950, to file in the office of the undersigned Referee and Special Master, their claims against the above-named debtor and their acceptances of the altered plans on forms furnished with the order of September 26, 1950, it is

Ordered that any creditor or stockholder who has previously accepted the said plan and who does not file a written rejection of said alteration of plan on or before November 18, 1950, shall be deemed to have accepted the said plan as altered, unless the previous acceptance provides otherwise, it is

Ordered that November 21st, 1950, 9:30 a.m., United States Court Room, Post Office Building, Las Vegas, Nevada, has been fixed as the time and place of hearing for the consideration of the confirmation of the plan for the reorganization of the said debtor, as altered by said alterations, and of such objections as may be made to the confirmation thereof.

/s/ FRANK W. INGRAM,
Referee and Special Master.

Copy mailed with notices of meetings to Atolia Mining Company, Pacific Mining Company, J. R. Bradley, Jr., Crocker Bank Building, San Francisco, Calif.; George W. Thiriot and Dean P. Thiriot, Cedar City, Utah; Wesley Koyen and Eva Koyen, Hiko, Nevada; Morse and Graves, Esqs., 121 Fremont St., Las Vegas, Nevada; George McGuire Pierce, 6057 Maryland Drive, Los Angeles 36.

[Endorsed]: Filed April 12, 1951.

[Title of District Court and Cause.]

OFFER TO DEBTOR IN REORGANIZATION

Whereas, the above-named debtor has filed a proposed plan of reorganization, together with a modification thereof, with the Clerk of the above-entitled Court, and

Whereas, the hearing on said proposed modified plan of reorganization has been set for the 21st day of November, 1950, at 9:30 a.m., at the court room of the United States District Court at Las Vegas, Nevada, and

Whereas, said debtor has filed a list of obligations of said corporation with said Court under date of November 6, 1950, and

Whereas, said debtor is desirous of borrowing money sufficient to pay the aforesaid obligations of said corporation, and

Whereas, the undersigned is willing to loan said debtor monies sufficient to pay the aforesaid obligations of said debtor on the following conditions, subject to the approval of this Honorable Court,

Now, Therefore, the undersigned, G. McGuire Pierce, hereby proposes to the said debtor and the above-entitled Court as follows:

(a) To loan said debtor sufficient monies up to but not exceeding the sum of \$10,000.00 to pay the preferred obligations against said debtor, together with all other listed and unsecured obligations in the amounts listed on the aforesaid proposal for reorganization filed with said Court the 6th day of November, 1950.

(b) To assume the secured claims of \$2,250.00 payable to the Clark County Wholesale Mercantile Co., Inc., on a conditional sales contract, in accordance with the terms of said contract, or if said creditor will not proceed under the terms of said conditional sales contract, then this proponent will advance sufficient sums to pay said creditor in full.

(c) To post a surety bond to insure payment to the Atolia Mining Company if and when any net amounts should be determined to be due and owing said Atolia Mining Company from the aforesaid debtor as a result of present pending litigation between the debtor and said mining company.

(d) To accept as security for the payment and/or advance of the sums hereinabove set forth a promissory note executed by said debtor, subject to the approval of the above-entitled Court, said promissory note to be secured by a chattel and realty mortgage on the mining properties, both real and personal, owned by said debtor in Lincoln County, Nevada.

In addition to the foregoing, the debtor shall execute, subject to the approval of the above-entitled Court, a lease and option with the undersigned as Lessee in accordance with the copy of a proposed lease attached hereto, and on the further condition that the debtor shall transfer free and clear to the undersigned as consideration for said transaction 75,000 shares of Treasury Stock now held by said debtor corporation and not having yet been issued, as the sole and separate property of the undersigned.

The undersigned shall have a first claim for and against all royalties due under the lease and option proposed until the undersigned has been repaid all sums advanced to said debtor and/or the aforementioned creditors of said debtor as hereinabove specified; a copy of the proposed lease and option is attached hereto and by reference made a part hereof.

This offer shall be considered as a complete offer in its entirety and no part thereof shall be considered several or separable.

Dated this 21st day of November, 1950.

/s/ G. McGUIRE PIERCE,

HAWKINS & CANNON,

By /s/ HOWARD W. CANNON,

Attorneys for Proponent.

[Endorsed]: Filed November 21, 1950. Referee.

LEASE AND OPTION AGREEMENT

This Lease and Option made the 21st day of November, 1950, between Lincoln Mining Co., Inc., a Nevada Corporation, by and through its duly elected officers, hereinafter referred to as the Lessor, and G. McGuire Pierce, hereinafter referred to as Lessee,

Witnesseth:

Whereas, the Lessor is the owner of certain patented and unpatented mining claims, together with

certain mining machinery and equipment, located within the State of Nevada, and

Whereas, the said Lessor is insolvent and in re-organization under the provisions of Chapter X of the Act of Congress relating to Bankruptcy under the jurisdiction of the District Court of the United States of America, in and for the District of Nevada, and

Whereas, said Lessor is desirous of borrowing monies from said Lessee in sufficient sums to pay certain creditors who have filed and proved claims against said Lessor under the aforesaid Bankruptcy Act and said Lessee is desirous of loaning to said Lessor sufficient sums to pay said creditors, provided, the approval of the District Court of the United States of America, in, and for the District of Nevada, is first had and obtained,

Now, Therefore, in Consideration of the payment of royalties to said Lessor as hereinafter provided, and the loaning by said Lessee to said Lessor of monies as above mentioned, and the covenants and agreements hereinafter expressed, It Is Mutually Agreed by and between said Lessor and Lessee as follows:

I.

The Lessor hereby leases to said Lessee all of those certain patented and unpatented lode mining claims, mines and mining grounds, together with any and all improvements thereon, and appurtenances thereunto belonging, including all buildings, real and personal property, of whatsoever character or description belonging to said Lessor for use in

connection with mining and milling operations, together with all the rights and privileges appurtenant to said premises or in anywise appertaining thereto, including any and all water rights, all being situate in the Tempiute (an unorganized) Mining District, County of Lincoln, State of Nevada, more particularly described as follows:

Name of Claim	Original Notice of Location Recorded Records of Lincoln County, Nevada		Amended Notice of Location, if Any Recorded, Records Lincoln Co., Nev.	
	Book	Page	Book	Page
Patented Claims (U.S. Mineral Survey No. 4760)				
Dome	L-1	384	M-1	211
Grubstake No. 2.....	L-1	328	M-1	211
Lime Cap	L-1	79	M-1	211
Scheelite	M-1	6	M-1	209
Scheelite No. 1.....	M-1	6	M-1	210
Scheelite No. 2.....	M-1	7	M-1	209
Townsite	L-1	402	M-1	212
Townsite No. 1.....	L-1	402	M-1	207
Townsite No. 2.....	M-1	7	M-1	213
Townsite No. 5.....	.....	.....	M-1	207
Claims Held by Location				
Dome No. 1.....	N-1	209-210		
Dome No. 2.....	N-1	210-211		
Grubstake No. III.....	L-1	329	N-1	248-249
Grubstake No. IV.....	L-1	329	N-1	249
Grubstake No. V.....	L-1	353	N-1	250
Grubstake No. 6.....	L-1	353		
Limecap No. 1.....	L-1	327		
Limecap No. 3.....	N-1	211-212		
North Contract No. 1.....	N-1	212-213		
North Contract No. 2.....	N-1	213		
Pyramid	L-1	384	N-1	247-248
Pyramid No. 1.....	N-1	211		
Scheelite No. 3.....	M-1	367-368	N-1	200-201
Scheelite No. 4.....	M-1	367	N-1	201-202
Scheelite No. 5.....	M-1	368	N-1	250-251
Scheelite No. 6.....	M-1	369	N-1	251-252
Scheelite No. 7.....	N-1	213-214		
Scheelite No. 8.....	N-1	202		
Scheelite No. 9.....	N-1	203		

Together with the Lessor's interest in and to that certain mining area and property described as the New Deal Area being more particularly described as follows:

That area lying within planes extended vertically downward through the exterior boundaries of what was once known as the New Deal Claim, which boundaries for the purpose of this Agreement are described by metes, bounds, courses and distances as follows:

Beginning at a point on the Grubstake No. 2 Patented Mining Claim, U. S. Mineral Survey No. 4760, marked by a pine stump of 10" diameter, 5.9 feet high and blazed "N.E. Corner New Deal," from which the N.E. corner of the Scheelite Patented Mining Claim, U. S. Mineral Survey No. 4760, bears S $77^{\circ} 22'$ W, a distance of 40.28 feet;

Thence running S $6^{\circ} 40'$ W, 706.49 feet to the S.E. Corner, a pine stump, 7" diameter, 4.8 feet high, blazed "S.E. Corner New Deal," upon the Scheelite Patented Mining Claim;

Thence running N $67^{\circ} 26'$ W, 632.18 feet to a South Side Corner, a pine stump, 7" diameter, 8.5 feet high, blazed "S. Side Center New Deal," upon the Scheelite Patented Mining Claim;

Thence running N $61^{\circ} 43'$ W, 417.13 feet, to the S.W. corner, a pine stump, 6" diameter, 5.3' high, blazed "S.W. Corner New Deal," upon the Scheelite No. 8 Unpatented Mining Claim;

Thence running N 18° 50' E, 532.68 feet to the N.W. Corner, a cedar stump 6" diameter, 6.0 feet high, blazed "N.W. Corner New Deal," upon the Townsite No. 2 patented Mining claim;

Thence running S 74° 16' E, 894.56 feet to the N.E. Corner, the point of beginning.

It is Mutually Understood and Agreed, that Lessor's interest in said New Deal Area is a $\frac{7}{8}$ ths interest only, carrying, however, the right to mine, mill and dispose of the full interest in and to said area, accounting to the owners of $\frac{1}{8}$ th interest in said area on a royalty payment basis of $\frac{1}{8}$ th of the royalties thereof. The Lessee herein shall have the full right to mine and operate said New Deal Area paying to the owners of the $\frac{1}{8}$ th interest a royalty as their interest may appear.

Together with any and all right, title or interest said Lessor may have in and to the Southeast Quarter ($SE\frac{1}{4}$) of Section 17, Township 3 South, Range 56 East, M.D.B.&M.

The Term of This Lease is for a period of twenty (20) years, commencing on the 25th day of November, 1950, and continuing to the 24th day of November, 1970, unless sooner terminated as herein provided, with the privilege of renewal for a further period of twenty (20) years. And the privilege of purchasing the said mining property as hereinafter set forth.

II.

From and after the date of the execution of this

Agreement and during all the time it shall continue in full force and effect Lessee shall be entitled to the sole and exclusive possession of all of said mining property and premises, including said improvements, appurtenances, mining equipment and personal property, and may explore, work, mine develop, and extract metals and minerals from the premises and may remove ores, metals and minerals from the premises in such manner as it may deem advisable and at its sole discretion, but at its own sole cost and expense and with due regard to the safety, development and preservation of said premises as a workable mine, and shall timber all shafts, drifts, tunnels, stopes and other workings where under good mining practice timbering is necessary.

III.

The Lessors and their agents shall have the right and privilege at all reasonable times to enter upon and into all parts of the premises hereby leased for the purpose of inspecting same, with the right to use all passageways, ropes, windlasses, ladders, hoists, and all other means of ingress and egress for such purposes, providing they do not interfere with the operations of Lessee, and further provided that such entry and inspection shall be at their own risk and hazard and Lessors will hold Lessee harmless from and indemnify it against liability to them or their agents for damages to personal property or for personal injuries arising from any condition of the premises or from any other cause except the wilful misconduct of Lessee or its agents, and fur-

ther provided that Lessee shall not be responsible for the acts or conduct of such agents of Lessor while on the premises.

The Lessee shall perform all work in the nature of mining or development in and upon the mining claims herein described in accordance with the mining laws of the State of Nevada, and in full compliance with the rules and regulations of the Mine Inspector of the State of Nevada.

IV.

For the said use and occupation of said premises and the exclusive right to extract and remove metals and minerals therefrom, and to sell the same and retain the proceeds thereof, Lessee shall pay Lessor a rental and/or royalty as follows:

(a) Ten per cent (10%) of the net returns from the sale of all minerals produced from said leased property providing, however, that in computing the net returns any premiums or bonuses received by said Lessee over and above the normal sale price shall be excluded in determining such net returns.

(b) An accounting shall be made on a monthly basis as soon after the 1st of each month as is practicable covering all sales made during the previous month, provided, that payment therefor shall have been received by said Lessee.

(c) All payments made hereunder shall be paid by said Lessee to the credit of said Lessor at the First National Bank of Nevada, Las Vegas Branch, Las Vegas, Nevada.

V.

The Lessee is hereby given an option and right to buy all of the right, title and interest of the Lessor in and to the hereinabove described claims and property, both real and personal, at any time during the term of this lease or any legal extension thereof, for the total purchase price of \$150,000.00.

It is Mutually Understood and Agreed that any and all royalties shall apply for and against the said purchase price herein specified.

It is Further Understood and Agreed that all monies advanced and loaned to the said Lessor by said Lessee shall be repaid to said Lessee from the first royalties due said Lessor as herein provided, and all such repayments of loans or advances by royalty payments shall apply as credit, for the full amount thereof, for and against the aforesaid purchase price, provided, the Lessee elects to exercise his option.

The Lessor shall, upon the execution of this Lease and its approval by the aforesaid Court, execute a deed to said Lessee of all of the Lessor's right, title and interest, in and to the aforesaid mining claims and personal and real property, said deed to be placed in escrow with the First National Bank of Nevada, Las Vegas, Nevada, with instructions to said bank to deliver said deed to the Lessee when the amount of royalties paid under the provisions of this lease, including all royalties repaid to Lessee on account of the loan hereinabove mentioned from said Lessee to the Lessor, including

principal and interest thereon, shall equal the aforesaid purchase price of \$150,000.00.

VI.

The Lessee may, but is not required under the provisions of this Lease, to treat the mill tailings developed from the processing of ores, provided, if the Lessee shall elect to treat said tailings, the royalties shall be paid to said Lessor on the same basis as primary ores as above specified.

It is Further Understood and Agreed that the Lessee is hereby given the right to treat ores from properties other than that of the Lessor, provided, that should said other ores be commingled with the ores from Lessor's property, accepted principles of weighing and sampling will be maintained. The Lessee shall have the full right to commingle tailings of ores of other properties than those covered by this agreement with the tailings from said properties hereinabove described.

VII.

Upon extraction of ores and saleable products from said premises, title to the severed materials shall immediately pass to Lessee and it shall thereupon have the right to sell and dispose of the same and pass full title thereto to the purchaser or purchasers thereof, and Lessee agrees to market any and all products to the best joint interests of Lessor and operator, but at its sole discretion as to time, place, conditions and sales prices.

VIII.

All equipment, tools, machinery, structures, improvements, and personal property of every nature and description hereafter bought or otherwise acquired and maintained or brought or installed or placed upon or within said premises by Lessee during the term hereof shall not be nor become fixtures, but shall remain the property of Lessee, whether affixed to the premises or not, and subject to removal by it at any time; and upon the expiration of the term hereof or the sooner termination of this lease as herein provided Lessee shall have the right to remove all of said equipment, tools, machinery, structures, improvements and personal property at any time within 90 days after the said expiration or sooner termination of this lease. It is understood, however, that this right of removal shall not extend to the dismantling and removal of any underground timbers, structures or improvements supporting any underground portions of said mine still workable and accessible for further underground mineral extraction, nor to the removal of timbers of the main shaft, nor to the removal of rails, air or water pipe installed in the main shaft, regardless of who made or makes such installation.

The right to removal herein provided is conditioned upon the payment or adequate provision for the payment by Lessee of all royalties and taxes due or accrued hereunder to the date of termination.

IX.

The Lessee shall perform the annual labor required by law to retain possession of the unpat-

ented claims and file the same as required by law. A copy thereof shall be furnished to said Lessor fifteen (15) days in advance of the actual filing thereof.

X.

Lessee shall at all times keep all bills and accounts for labor, supplies and materials done, performed or furnished to, for or upon the premises promptly paid. It is further agreed that during the time that this lease is in force and effect no party hereto, without the consent of the others, shall place or cause to be placed any lien, mortgage or incumbrance of any kind or character against the properties.

XI.

The Lessee further agrees that it will pay all State and County taxes lawfully levied upon the net proceeds of mines, where such proceeds result from the production and sale of ores from Lessee's mining operations upon the ground herein leased, including the amount of such tax which may be payable, if any, upon any share of such proceeds which may be paid to Lessor by way of royalty or royalties, if any, up to but not exceeding the amount of such taxes calculated at a rate up to five Dollars (\$5.00) per hundred of actual assessed valuation and lawful levy; any taxes lawfully due from and payable by Lessor arising from a tax rate in excess of \$5.00 per hundred shall be borne and paid by Lessor.

Lessee further agrees that it will not allow or permit any miner's, materialmen's, labor or other

liens to be filed or attached against the property herein described or against this leasehold estate.

Lessee agrees that it will permit Lessor to post and to thereafter keep posted in a conspicuous place on said premises, a notice to the effect that Lessor will not be responsible for any labor performed, materials furnished, or improvements made by the Lessee under this lease; and further, that the Lessee will before employing one or more persons in or upon the premises, or in connection with any work under this lease, accept and at all times thereafter comply with the terms, provisions and conditions of the Nevada Industrial Insurance Act, and pay all premiums and make all reports required by the Nevada Industrial Commission.

XII.

Lessee shall also comply with all the provisions of the State and Federal Social Security Acts and the Unemployment Compensation Laws, and shall make all reports, returns and payments required by such acts and laws and shall at all times indemnify and hold Lessors harmless of and from any and all claims and demands which could or might arise against Lessors under and by virtue of any of said laws or acts arising out of Lessee's operations.

XIII.

Lessee shall at all times keep true and accurate books of account, mine and mill records and records showing the amount of all ore mined, milled and/or shipped and all costs of reduction and sale and all amounts received therefor, and shall make and keep

maps showing all workings and make all reports as may be required by law or rules or regulations of any governmental authority, keeping copies thereof. All such books, records, reports and maps shall at all reasonable times be open to the inspection of Lessor, or any of them, their agents, auditors and attorneys, provided that only those cost records which become public property under the Nevada net proceeds tax laws shall be open to such inspection, and no other cost records.

XIV.

The Lessee shall have the right to terminate this lease at any time by giving to Lessor notice to that effect at least sixty (60) days prior to the date of such contemplated termination, and Lessee shall also at the time of giving notice file and record in the office of the County Recorder of said Lincoln County an executed copy thereof, and a duly executed and acknowledged relinquishment of this lease and of all of the rights of Lessee hereunder. Upon such termination Lessee shall cease to be liable or responsible for any future payments or expenditures, other than those current bills, taxes, levies and statutory charges which shall have accrued as of the date fixed for such termination, and shall have ninety (90) days' additional time to dismantle and remove all equipment, machinery, supplies, etc., removable under the terms hereof.

XV.

It is mutually agreed, covenanted and understood between the parties hereto, that each and every

clause, conditions, covenant and agreement hereof shall bind and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of each of the parties hereto.

It is the express agreement and understanding of the parties hereto, that this lease may be assigned and transferred by the Lessee to such other person, firm or corporation as it may elect, the only obligation in the event of such assignment being to notify Lessor in writing of the name and address of the assignee.

XVI.

The Lessor covenants, promises and agrees to and with the Lessee, that said Lessee, keeping and performing all of the terms, conditions, and covenants herein contained on its part to be kept and performed, shall and may lawfully, peacefully and quietly have, hold, use, occupy and possess the premises hereby leased for and during the term hereof without any let, suit, hindrance, eviction, ejecting, molestation or interruption whatsoever of or by Lessor or any other person or persons whatsoever lawfully claiming or to claim, by, from or under them or any of them.

XVII.

Lessor hereby gives and grants to Lessee the exclusive right, privilege, and option to extend the term of this lease for an additional period of twenty (20) years from the date of the expiration hereof provided the lease is then in full force and

effect. Such option, if exercised, shall be exercised not later than May 24, 1970, and not earlier than January 1, 1970, and shall be exercised by written notice to that effect from Lessee to Lessor.

XVIII.

It is understood and agreed between the parties hereto that the rights and obligations of the Lessor hereunder are joint and several.

XIX.

It is mutually understood and agreed that the execution and performance of the terms and conditions of this lease shall be first dependent on the approval of the United States District Court, in and for the District of Nevada.

In Witness Whereof, the parties hereto have set their hands and seals this 21st day of November, 1950.

[Seal]

LINCOLN MINING CO., INC.,
A Nevada Corporation,
Lessor.

By /s/ G. W. THIRIOT,
President.

By /s/ EVA KOYEN,
Sec., Vice-President.

/s/ G. McGUIRE PIERCE,
Lessee.

State of Nevada,
County of Clark—ss.

On this 21st day of November, 1950, personally appeared before me, a Notary Public in and for said County and State, G. W. Thiriot and Eva Koyen, Sec., known to me to be the President of the Corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said Corporation and that the seal affixed to said instrument is the Corporate Seal of said corporation; that the signatures to said instrument were made by officers of said Corporation as indicated after said signatures; and that the said Corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

[Seal] /s/ HAROLD M. MORSE,
Notary Public in and for
Said County and State.

My commission expires Dec. 20, 1950.

Attest:

.....,
Secretary.

State of Nevada,
County of Clark—ss.

On this 21st day of November, 1950, personally appeared before me, a Notary Public in and for said County and State, G. McGuire Pierce, known

to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Seal] /s/ HAROLD M. MORSE,
Notary Public in and for
Said County and State.

My commission expires Dec. 20, 1950.

Approved:

.....

[Endorsed]: Filed November 21, 1950, Referee.

[Endorsed]: Filed November 29, 1950, U.S.D.C.

[Title of District Court and Cause.]

AN AMENDED OFFER TO DEBTOR IN REORGANIZATION

Whereas, the undersigned filed a proposed offer to debtor in reorganization in the above-entitled matter with the Referee in Bankruptcy on the 21st day of November, 1950, and

Whereas, Paragraph "c" of said offer was not acceptable to the Atolia Mining Company, holders of conditional sales contracts with the above-named debtor, and

Whereas, the undersigned in open court proposed a substitution for the aforesaid Paragraph "c" and wishes to reduce said proposal to writing;

Now, Therefore, the undersigned, G. McGuire Pierce, proposes in lieu of the aforesaid Paragraph "c" in his offer to debtor in reorganization filed with the above-entitled court on November 21, 1950, the following:

"(c) To pay to said Atolia Mining Company the sum of \$7,700.00 as payment in full of all sums due said company under conditional sales contracts, open accounts, or otherwise, from the above-named debtor, or the stockholders of said debtor, it being understood that this shall constitute settlement in full of all claims between said parties, exclusive of those matters now in litigation in the Seventh Judicial District Court in the case of Koyen and Thiriot, et al., vs. Atolia Mining Company, et al.; payment of said sums shall be made as follows:

The sum of \$2,500.00 cash upon the approval of this proposed plan by the above-entitled court; the balance to be paid at the rate of \$300.00 or more per month, commencing with the first day of the month after approval of this plan by the above-entitled Court, and continuing on the first day of each and every month thereafter until the balance in the sum of \$5,200.00, together with interest at the rate of 6% per annum shall have been paid in full.

It Is Further understood and Agreed that the payment of the balance shall be secured by a conditional sales contract or a note executed by the proponent hereof secured by a chattel mortgage."

Dated this 22nd day of November, 1950.

G. McGUIRE PIERCE,

By /s/ HOWARD W. CANNON,
Attorney at Law.

HAWKINS & CANNON,

By /s/ H. W. CANNON,
Attorneys for Proponent.

[Endorsed]: Filed November 27, 1950, Referee.

[Endorsed]: Filed November 29, 1950, U.S.D.C.

[Title of District Court and Cause.]

FINDINGS AND REPORT OF REFEREE

The continued hearing required by Sections 161 and 170 of the Bankruptcy Act and the proposed plan approved by the Court on the 26th day of September, 1950, and the proposed modification of such plan approved by the Court November 6th, 1950, and setting November 21st, 1950, for hearing any objections to such altered plan and as so modified hearing on acceptances to such plan by the creditors and stockholders before the Referee and Special Master, Frank W. Ingram, for report and proposed orders: the debtor being represented by Morse and Graves, Esqs., of Las Vegas, the Atolia Mining Company, et al., a listed creditor, being represented by J. Howard Gray of Ely, Nevada; the proposed lessee G. McGuire Pierce, being represented by Hawkins & Cannon, Esqs., of Las Vegas,

all of the stockholders being present in person, and several creditors, the stockholders having filed their acceptances to altered plan for 100% of all outstanding stock and 72% of the creditors whose claims were filed and allowed within the time extended by the Court (Exhibit A attached) and no objections to the plan having been made at such hearings and the lessee having made an offer to purchase the property of the bankrupt and the bankrupt having entered into a contract to lease and option to sell subject to the approval of this court (original lease and option attached) and there being no adverse interest represented at such hearing.

The Referee and Special Master having considered the files and records in this case and the testimony of the several witnesses respectfully recommends as his findings:

(1) That due notice of said hearings of November 21, 1950, was given according to the orders of the Judge of this Court and certificate of mailing to all creditors, stockholders and others interested are in the records of the Referee.

(2) That claims filed and acceptances filed and allowed are those provided for in the order of the Judge of the Court dated September 21st and November 6th, 1950, and are listed in Exhibit A attached.

(3) That 100% of all outstanding stock accepted altered and modified plan and 72% of the amount of claims filed and allowed accepted altered plan.

(4) That objections to other claims were filed by the debtor and have been noticed for hearing on December 15, 1950, at Las Vegas the objections being that such claims had never been audited by the debtor and were before corporate organization on September 27, 1949.

(5) That G. McGuire Pierce submitted an option to purchase on lease terms the property of the debtor for the sum of \$150,000.00 and to loan the debtor the sum of \$10,000.00 to pay off listed creditors in full receiving payment of loan from royalties according to the terms of an agreement dated November 21, 1950, attached hereto and subject to the approval of the Judge of this Court.

(6) That by the terms of the offer of G. McGuire Pierce he also agreed to pay to the Atolia Mining Company, et al., the sum of \$7,700.00 assuming a conditional sales contract in full settlement of any claims of Atolia Mining Company, now before this Court on reclamation petition, against the estate and any prior claims against the present stockholders prior to corporate organization on September 27, 1949.

(7) That by the terms of the offer of G. McGuire Pierce he would assume and pay the secured claim of the Clark County Wholesale Mercantile Company, Inc., on conditional sales contract in the amount of \$2,250.00.

(8) That at such hearing the said G. McGuire Pierce offered to modify his offer to paragraph (c) substituting payment for security bond in pay-

ment of Atolia Mining Company's claim (Finding 6 above) which was accepted by Atolia conditioned upon the Judge of this Court approving offer, agreement and plan and consenting to continuing its petition to reclaim machinery now on bankrupt's property and claimed by petitioner to have never been assigned to debtor.

(9) The offer of Pierce and the corporate acceptance in form of agreement is just and equitable, will provide for payment of creditors, and is proposed by all stockholders at stockholder and directors meeting at Las Vegas on November 21, 1950, and the order attached as prepared by the parties may be signed *ex parte* as all have had copies.

(10) That the plan has been accepted by the requisite number in amount of creditors and stockholders without objection and complies with the provisions of Section 216 of the Act of Congress regarding bankruptcy and the Referee recommends that the Judge should designate the 15th day of December, 1950, at Las Vegas, Nevada, U. S. Courtroom, 9:30 a.m., as the time and place for consideration of the confirmation of the plan and of such objections as may be made to the confirmation as provided in Section 179 of said Act.

(11) That the priority claim of the United States Treasurer will be paid in full from funds deposited upon approval of offer, agreement and altered plan and therefore time may be properly shortened for notice: That the Securities and Ex-

change Commission has advised this Court that there is no public stock interest and they are not participating in the proceedings.

(12) That a time should be fixed for filing any expenses of operation since petition, for costs of administration and hearings thereon

Dated at Reno, this 28th day of November, 1950.

Respectfully submitted,

/s/ FRANK W. INGRAM,

Referee and Special Master.

Lincoln Mining Company Inc. A-60-A

Claims Filed and Allowed on Order of Court of September 26th, 1950, Up to and Including November 18, 1950, Subject to Objection of Creditors or Stockholders for Purpose of Section 179

Claim No.	Name and Address	Amount	Accepted
1.	Collector of Internal Revenue (Priority) Reno, Nevada	\$ 47.74	
2.	John A. Kaze..... Alamo, Nevada	351.61	\$ 351.61
3.	W. W. Showalter..... Hiko, Nevada	657.62	657.62
4.	Duplicate to Claim 10.		
5.	Duplicate to Claim 2.		
6.	Employment Security Dept... Carson City, Nev. (Priority)	52.96	
7.	Employment Security Dept... Carson City, Nev. (Priority)	45.34	
8.	Hodges-Cook Merc. Co. Pioche, Nevada	448.80	448.80
9.	Ely Valley Mines, Inc. Pioche, Nevada	6.00	
10.	Charles E. Priester..... Tonopah, Nevada	186.67	186.67
11.	E. H. Snyder..... 218 Felt Bldg. Salt Lake City, Utah	43.16	
12.	Grant A. Wadsworth..... P.O. Box 121 Panaca, Nevada	338.64	338.64

Claim No.	Name and Address	Amount	Accepted
13.	Walter A. Ray, Box 278..... Caliente, Nevada	820.74	
14.	Caliente Public Utilities..... Caliente, Nevada	78.42	
18.	B. W. VanVoorhis Jr. P.O. Box 1011 Bishop, California	580.00	
19.	Foster Smith, Box 88..... Carson City, Nevada	1,365.00	1,365.00
20.	Eva Koyen Hiko, Nevada	1,327.87	1,327.87
21.	Golfredson's Caliente, Nevada	113.87	
22.	O. H. Gulack, Box 15..... Little Lake, Calif.	813.11	813.11
23.	Standard Oil Co. Calif. Box 88, Laws, Calif.	35.65	
26.	Orland McDowell P.O. Box 626 Tonopah, Nevada	163.35	163.35
27.	Delworth Wooley Manti City, Utah	214.90	214.90
28.	Rylon Chaffin P.O. Box 128 Eddyville, Kentucky	15.42	15.42

Total amount claims filed, approved
and percentage—72% plus\$7,981.87 \$5,882.99

Objections [none].

Claims Filed and Objected to Giving Objector.
Subject to Hearings

Claim No.	Creditor & Address	Amt.	Objections by	Plan
15.	Thiriot Bros. Hiko, Nevada	\$4,559.60	Debtor	Accepted
16.	G.W. Thiriot Tem Piute Hiko, Nevada	1,769.10	Debtor	Accepted
17.	Dean P. Thiriot..... Panaca, Nevada	1,664.16	Debtor	Accepted
25.	Wesley Koyen Hiko, Nevada	7,085.77	Debtor	Accepted
24.	Morse & Graves, Esq... Las Vegas, Nevada	2,500.00	Referee*	Accepted

* Not itemized according to Rule 13.

Stockholders Representing All Outstanding Stock Accepted
Plan as Modified

Name and Address	Shares of Stock
1. Eva H. Koyen	56,250
Hiko, Nevada	
2. Wesley Koyen	56,250
Hiko, Nevada	
3. Dean P. Thiriot	56,250
Hiko, Nevada	
4. G. W. Thiriot, Hiko, Nev.	56,250
Total stock and percentage.....	225,000 100%
Total capital stock	300,000 shares
Remaining in treasury.....	75,000 shares
Plan and agreement provides for issuing this remaining stock to G. McGuire Pierce.	

[Endorsed]: Filed November 29, 1950.

In the District Court of the United States of
America, in and for the District of Nevada

In Reorganization A-60-A

In the Matter of
LINCOLN MINING COMPANY, INC.,
Debtor.

ORDER APPROVING OFFER AND PLAN OF
REORGANIZATION

A hearing having been held on the 21st and 22nd days of November, 1950, before the Referee and Special Master, Frank W. Ingram, pursuant to order of this Court dated the 6th day of November, 1950, on the modified plan for the reorganization of the Lincoln Mining Co., Inc., the above-named debtor, and for the consideration of any objections

which might be made, or of such amendments or plans as might be proposed by said debtor or by any creditor or stockholder herein, and notice of said hearing having been given as required by Section 171 of the Act of Congress relating to bankruptcy, and an offer to debtor in reorganization having been prepared and filed with said Court by G. McGuire Pierce in accordance with the proposed modified plan of reorganization and an amended offer to debtor in reorganization made by the said G. McGuire Pierce in open court, and it appearing to the Court that such offer to debtor in reorganization and amended plan of reorganization complies with the said bankruptcy act and is fair and equitable and feasible.

It Is Therefore Ordered that the offer to debtor in reorganization as amended made to the above-entitled debtor by G. McGuire Pierce be, and it is hereby, approved, and

It Is Further Ordered that the Lease and Option between the debtor, Lincoln Mining Company and G. McGuire Pierce be, and it is hereby approved, and the said debtor and the Lessee therein are hereby authorized to proceed in accordance with the terms of the said lease.

It Is Further Ordered that the said G. McGuire Pierce pay to said Atolia Mining Company the sum of \$7,700.00 as payment in full of all sums due said company under conditional sales contracts, open accounts, or otherwise, from the above-named debtor or the stockholders of said debtor, exclusive of those matters now in litigation in the Seventh

Judicial District Court in the case of Koyen and Thiriot, et al., vs. Atolia Mining Company, et al., on the terms and conditions set forth in the amended offer to debtor in reorganization.

It is Further Ordered that the said G. McGuire Pierce deposit the sum of \$10,000.00 in the First National Bank of Las Vegas, Nevada, in trust for the purpose of paying the preferred and unsecured obligations of said debtor corporation and listed in the proposal for reorganization filed with this court on the 6th day of November, 1950; provided, the said claims shall not be paid without first securing the approval of this Court and without the stockholders having an opportunity to object thereto.

It is Further Ordered that said G. McGuire Pierce assume the secured claim of \$2250.00 payable to the Clark County Wholesale Mercantile Company, Inc., in accordance with the terms of said conditional sales contract.

It Is Further Ordered that in consideration of said offer and amended offer to debtor in reorganization that the Lincoln Mining Company, Inc., by and through its duly authorized officers execute a certificate for 75,000 shares of Treasury Stock now held by said debtor corporation to the said G. McGuire Pierce as his sole and separate property.

It Is Further Ordered that said Lincoln Mining Company, Inc., execute its note payable to the said G. McGuire Pierce for the sums of money advanced by said G. McGuire Pierce to said debtor corporation in accordance with the terms of this order, together with such additional sums that may be ad-

vanced by said G. McGuire Pierce, as provided in said offer and amended offer to debtor in reorganization, and that said note be secured by a chattel and realty mortgage on the mining properties, both real and personal, owned by said debtor corporation in said Lincoln County, Nevada.

It Is Further Ordered that the said G. McGuire Pierce shall have a first claim for and against all royalties due under the Lease and Option herein approved by this Court until said Lessee has been repaid all sums advanced to the said debtor, Lincoln Mining Company, Inc., or its creditors.

Dated this 28th day of November, 1950.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed November 29, 1950.

[Title of District Court and Cause.]

ORDER FIXING HEARINGS ON CONFIRMATION OF PLAN AND DISMISSAL OF PROCEEDINGS OR ADJUDICATION AND PROVIDING FOR NOTICE THEREOF

At Reno, in said district on the 28th day of November, 1950.

The report and findings of the Referee and Special Master of the above-named debtor having been filed herein recommending that a time be fixed for the hearing for the consideration of the con-

firmation of the plan for the reorganization of the said debtor, approved by this Court under Section 174 of the Act of Congress relating to bankruptcy on the 28th day of November, 1950, to fix a hearing under Section 236 (c) of said Act, and to designate that notice thereof shall be given in the form and manner proposed in said report, and it further appearing that at the hearing held at Las Vegas, Nevada by the Referee and Special Master 100 per cent of the stockholders and 72% of the creditors, whose claims had been filed, accepted the modified plan of reorganization, and it further appearing that the claim of the United States government in the amount of forty-seven dollars and seventy-four cents (\$47.74) is to be paid immediately from money deposited under the plan and it will be unnecessary for the Court to delay the time of hearing for the notice to the Secretary of Treasury, and it further appearing that the Security and Exchange Commission has filed notice that there is no public stock interest involved in these proceedings and they need not be notified, and no one appearing in opposition thereto and the matter being one upon which an order should be entered forthwith;

Now upon the report and findings of the Referee and Special Master adopted as the findings of this Court and all proceedings had before me, and it appearing that said plan has been accepted as required by Section 179 of the said Act, it is

Ordered that December 15, 1950, 9:30 a.m., United States District Court Room, Post Office Building, Las Vegas, Nevada, be, and it hereby is, fixed as

the time and place (a) of a hearing for the consideration of the confirmation of the plan for the reorganization of the Lincoln Mining Company, Inc., the above-named debtor, approved by this Court under Section 174 of the Act of Congress relating to bankruptcy on the 28th day of November, 1950, and such objections as may be made to the confirmation thereof; and (b) of a hearing pursuant to Section 236(2) of the said Act, if confirmation of the said plan is refused; and in the event of such refusal of confirmation, after said hearing or any adjournment thereof, an order will be entered either adjudging said debtor a bankrupt and directing that bankruptcy be proceeded with or dismissing the proceeding under Chapter X of the said Act, as in the opinion of the Judge may be in the interests of said stockholders and creditors; and it is further

Ordered that the Referee and Special Master shall hold the hearings at the time and place above designated as provided in the General Order of Reference, filed March 22, 1950, and make report, findings and attached proposed order; it is further

Ordered that the said Referee and Special Master shall set down for hearing objections to claims filed in this proceeding at the same time and place and give creditors notice of such hearing on objections to allowance of claims; it is further

Ordered that the Referee and Special Master shall forthwith upon the approval of this order mail the following notice to creditors and stockholders of said debtor as the same may appear upon the records of his office, and to the following, Morse and Graves,

Esq., Las Vegas, Nevada, attorneys for lessees; G. McGuire Pierce, 6057 Maryland Drive, Los Angeles 36, California; Atolia Mining Company, Crocker Bank Building, San Francisco, Calif.; Howard Gray, Esq., Ely, Nevada; Bank of Nevada, Las Vegas, Nevada; Secretary of the Treasury, Washington, D. C.; Securities and Exchange Commission, 930 Sansome St., San Francisco 5, Calif.

Notice of Hearing under Sections 179 and 236(2).

In the District Court of the United States for the
District of Nevada

No. A-60-A

In Proceedings for the Reorganization
of a Corporation

In the Matter of
LINCOLN MINING COMPANY, INC.,
Debtor.

To all Creditors and Stockholders and Other Parties
in Interest:

Notice Is Hereby Given that December 15, 1950, at 9:30 a.m., United States District Court Room, Post Office Building, Las Vegas, Nevada, has been fixed as the time and place (a) of a hearing for the consideration of the confirmation of the plan for the reorganization of the Lincoln Mining Company Inc., the above-named debtor, approved by this Court on November 28th 1950, under Section 174 of the Act of Congress relating to bankruptcy,

and of such objections as may be made to the confirmation of such plan; and (b) of a hearing pursuant to Section 236(2) of the said Act if confirmation of the said plan is refused.

Notice Is Further Given that in the event of the refusal of confirmation of the said plan, after such hearing under Section 236(2) of the said Act or any adjournment thereof, an order will be entered either adjudging said debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the Act of Congress relating to bankruptcy, or dismissing the proceedings under Chapter X of the said Act, as in the opinion of the Judge may be in the interests of the creditors and stockholders of the said debtor.

Notice Is Further Given that the said hearings may be adjourned from time to time without notice to the debtor, creditors, stockholders, intervenors or other parties of interest other than the announcement of the adjourned date or dates at the hearings.

By Order of the Court.

Dated Reno, Nevada, November 28th, 1950.

/s/ FRANK W. INGRAM,
Referee and Special Master.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed November 29, 1950.

[Title of District Court and Cause.]

REFEREE AND SPECIAL MASTER'S REPORT ON OBJECTIONS TO CONFIRMATION OF PLAN BY DEBTOR CORPORATION AND REPLY TO OBJECTION BY G. McGUIRE PIERCE, LESSEE, AND FINDINGS THEREON

The Judge of this Court having heretofore on the 22nd day of March, 1950, entered his general order of reference to the undersigned, Frank W. Ingram, as Referee and Special Master to hear, determine and report on all matters in the above-entitled reorganization proceedings, and thereafter after appropriate hearings under Sections 161 and 170 of the Act of Congress relating to bankruptcy approved the altered and modified plan of reorganization in its order of November 28th, 1950, as provided in Section 179, approved the offer of a lease and option for the operation of the property and the payment of all outstanding approved claims of creditors as proposed in the lease and offer and the settlement of petition to reclaim certain personal property owned by the Atolia Mining Company, et al., against certain stockholders and fixed a time and place for a hearing on the confirmation of the plan or objection thereto under Section 174, before the Referee and Special Master at Las Vegas, Nevada, on December 15, 1950, and to report, make findings and attach proposed order to such findings, that upon the 15th of December, 1950, the Referee and Special Master in pursuance to the said order

conducted such hearing, at which hearing there appeared Morse and Graves, Esqs., of Las Vegas, Nevada, attorneys for the debtor corporation, who filed an objection in writing at the time of said hearing to the confirmation of the plan attached hereto; Howard Cannon Esq., of Hawkins and Cannon, Esqs., of Las Vegas, Nevada, representing the lessee, G. McGuire Pierce, who filed a reply to the objection of the debtor filed in open Court and which reply is attached hereto; J. Howard Gray, Esq., of Ely, Nevada, who appeared for Atolia Mining Company, et al., and who advised the Court that he was prepared to offer releases and satisfactions of the claims of his client to their claims in reclamation against the stockholders of the debtor corporation as set out in the order approving plan dated November 28, 1950. That notice of hearing for confirmation of plan was sent to all creditors, stockholders, and others interested as required in the general order of reference, the order of this Court dated November 28, 1950, and the Act of Congress relating to bankruptcy and that no objections were filed in writing by any stockholder, creditor or other interested person except as indicated above by the debtor corporation.

Wherefore, the Referee and Special Master reports and recommends the following as his findings and recommends their adoption and approval:

1. That due notice of hearing on confirmation of the altered and modified plan of reorganization, setting December 15, 1950, at the United States

Court Room, Post Office Building, Las Vegas, Nevada, before the Referee and Special Master as provided in the order of the District Judge, dated November 28, 1950, was given to all creditors, stockholders and other interested persons as provided in Section 179 of the Bankruptcy Act.

2. That no written objections to the confirmation of the plan was filed by any creditor, stockholder or other person interested save and except the written objection of the debtor corporation attached hereto.

3. That the debtor corporation having submitted the plan and approved the alterations, and modifications of such plan at previous hearing and filed no objections to the report of Referee and order of the Court within the time authorized by the order of reference, and having accepted the offer of G. McGuire Pierce in open Court on the hearing on approval of plan and executed a lease and option which was approved by the District Judge on November 28, 1950, and the Atolia Mining Company, et al., relying upon the acceptance of the debtor of its plan proposed and accepted as modified in hearing at Las Vegas on November 21 and 22, 1950, having tendered in Court the settlement agreements on their claim to reclaim their property and the lessee, G. McGuire Pierce, advising the Court that they were prepared to and had arranged settlement of claims of secured creditors and would deposit the \$10,000.00 in trust for the immediate payment of all approved claims of creditors and made tender

of such amounts and agreements at the hearing on confirmation held December 15, 1950. The Referee finds that the objection of the debtor corporation, attached hereto, does not offer the creditors or the stockholders any firm offer more advantageous than the approved plan adopted by the Court and will only further delay the satisfaction of the claims of creditors and will delay the commencement of the operation of the property which is a strategic tungsten producer needed in the present national crisis.

4. Wherefore, the Referee and Special Master recommends that the Court, by an appropriate show-cause, fix a hearing time and plan for the determination of why the plan approved by this Court should not be confirmed notwithstanding the objections of the debtor corporation.

5. The Referee and Special Master certifies that a copy of this report and findings has been sent to the parties represented at the hearing, namely Morse & Graves, Esqs., representing the debtor; Howard Cannon, Esq., representing the lessee, G. McGuire Pierce, and J. Howard Gray, Esq., representing Atolia Mining Company, et al., petitioner in rec-lamation.

/s/ FRANK W. INGRAM,
Referee in Bankruptcy.

[Title of District Court and Cause.]

OBJECTIONS BY LINCOLN MINING COMPANY, INC., A CORPORATION, DEBTOR,
TO APPROVAL OR CONFIRMATION OF
THE ALTERED AND MODIFIED PLAN
OF G. McGUIRE PIERCE

To: The Honorable Roger T. Foley, Judge of the
District Court of the United States, in and for
the District of Nevada:

Comes Now, Lincoln Mining Company, Inc., a corporation, and files herein its written objections to the acceptance or confirmation of the altered and modified plan heretofore submitted herein and the proposed lease of G. McGuire Pierce, and respectfully represents to this Honorable Court as follows, to wit:

I.

That on or about the 6th day of November, 1950, a proposed modification of the plan of reorganization for this corporation was approved by this Court and by Order of this Court the hearing on said approval was set for November 21, 1950, at 9:30 o'clock a.m., in the Federal Building, at Las Vegas, Nevada; that the modification of the original plan for reorganization was filed herein by G. W. Thiriot, President of Lincoln Mining Company, Inc., and that included therein as Paragraph V is the following:

“Mr. George McGuire Pierce, 6057 Maryland Drive, Los Angeles, California 36, makes the

proposition to pay off the indebtedness of Lincoln Mining Company, Inc., in return for a bond and lease on the property, buildings, machinery, etc., for a period of (10) ten years. A total purchase price of \$150,000.00 payable from royalties at the rate of 10% on net returns to apply on purchase price. A contract to be worked out and executed if sanctioned by the Court.”

And that in the Order of Court referred to, noticing the hearing for consideration of said modified plan, said modification was summarized as follows:

“That George McGuire Pierce offers to pay off all indebtedness of the debtor company in return for a bond and lease upon the debtors property for a period of ten years. A total purchase price of \$150,000 payable from royalties on net returns to apply to purchase price. Plan if approved by creditors and stockholders to be followed by contract sanctioned by Court. Bond in escrow to cover liability in suit against Atolia Mining Company.”

II.

That at the time and place set for the consideration of said modified plan the said George McGuire Pierce, without prior notice to the corporation or its officers or stockholders or any of the creditors of the corporation, altered and amended his proposal, which alteration is briefly summarized as: The said corporation be directed to issue 75,000 shares of its capital stock, held and unissued by

said corporation as Treasury Stock, to the said George McGuire Pierce, with no further or added consideration than his original proposal made to George W. Thiriot, president of this corporation; that a lease had been prepared on the mining property, the property of this corporation, by the attorneys representing the said George McGuire Pierce, and was presented to the officers of this corporation for their signatures on said date; and that the said George McGuire Pierce would pay in cash to the Atolia Mining Company the sum of \$7700.00 to secure a full release from said company of all of their claims against the debtor corporation; that present at said court hearing were all the officers and directors of the debtor corporation, and as they were then and there informed by the said George McGuire Pierce that the lease he had drawn and his altered proposal were final insofar as he was concerned, the said officers and directors of said corporation and its stockholders, therefore, accepted said alteration of said modified plan, but that they acted hurriedly and they were at that time of the firm opinion that said alteration and modification so proposed was not for the best interest of the corporation, its stockholders and its creditors.

III.

That subsequent to the hearing aforesaid on the 21st day of November, 1950, at Las Vegas, Nevada, the officers and directors of the debtor corporation have secured sufficient funds to pay and liquidate all of its creditors, and are now prepared to do so,

and that by said arrangement the property rights of the stockholders will be protected, the assets of the corporation preserved, and all of its creditors paid.

IV.

The debtor corporation respectfully represents to this Honorable Court, therefore, that it be directed by appropriate order of this court to pay and discharge its indebtedness to each, every one and all of its creditors, within a time to be prescribed by Order of this Honorable Court, and to file herein receipts evidencing such payment, and that thereupon these proceedings be dismissed and the property returned to the debtor corporation, and that the lease heretofore entered into herein with George McGuire Pierce be not confirmed, but on the contrary that the same be declared null and void.

Wherefore, Lincoln Mining Company, Inc., a corporation, prays that it be ordered by appropriate order of this Court to pay and discharge its creditors within a time to be fixed by Order of this Court, and that proper receipts be filed with this Court, evidencing such payment; that the proposed lease of the said George McGuire Pierce be not confirmed, but be declared null and void; that these proceedings be dismissed and all of the assets of the corporation be returned to the corporation.

JOHN S. HALLEY, and
MORSE & GRAVES,

By /s/ HAROLD M. MORSE,
Attorneys for Lincoln Mining Company, Inc., a
Corporation.

State of Nevada,
County of Clark—ss.

George W. Thiriot, being first duly sworn on oath, deposes and says:

That he is the president of Lincoln Mining Company, Inc., a corporation, debtor in the foregoing entitled cause; that he is making this verification for and on behalf of said corporation; that he has read the foregoing Objections to Approval or Confirmation of the Altered and Modified Plan of G. McGuire Pierce and knows the contents thereof, and that the same is true of his own knowledge, except as to any matters therein stated upon information and belief, and as to those matters he believes it to be true.

/s/ G. W. THIRIOT,
President.

Subscribed and sworn to before me this 15th day of December, 1950.

[Seal] /s/ LILLIAN D. LANE,
Notary Public in and for
Said County and State.

[Endorsed]: Filed December 15, 1950, Referee.

[Title of District Court and Cause.]

REPLY TO OBJECTIONS BY LINCOLN MINING COMPANY, INC., A CORPORATION, DEBTOR, TO APPROVAL OR CONFIRMATION OF THE ALTERED AND MODIFIED PLAN OF G. McGUIRE PIERCE

To: The Honorable Roger T. Foley, Judge of the District Court of the United States, in and for the District of Nevada:

Comes Now, G. McGuire Pierce, and replies to the Objections filed by Lincoln Mining Company, Inc., a corporation, the debtor in the above-entitled matter, and petitions this Honorable Court for confirmation of the plan in reorganization heretofore submitted by this proponent, and in connection therewith alleges and states as follows:

I.

Proponent admits that an original plan for reorganization and modification thereof was filed by G. W. Thiriot, President of Lincoln Mining Company, Inc., and in that connection denies that a firm offer to Debtor in reorganization was made by this proponent as alleged in Paragraph I of the aforesaid Objection, except for the final plan submitted to this Honorable Court on Tuesday, November 21, 1950.

II.

Admits the matters set forth in Paragraph II of said Debtor's Objections except that this proponent

denies on information and belief the matter set forth commencing with the word "therefore" on Line 4, Page 3, and ending with the word "creditors," Line 8, Page 3, and in connection therewith alleges that said stockholders fully considered and discussed the plan and certain modifications as presented by this proponent and agreed in open Court that said plan as modified was for the best interests of the corporation, its stockholders and its creditors, and that the required per cent of creditors and all of the stockholders have agreed to the plan proposed by this proponent, as modified; and that a stockholders meeting was held and a resolution adopted accepting the plan as modified and consenting to the execution of the lease referred to in said plan.

III.

Proponent has no information on which to base a belief as to the matters set forth in Paragraph III of said Objections.

IV.

That the creditors of said Debtor in reorganization have relied on the amended plan and have consented thereto as shown by the records of this Court and are expecting to receive immediate payment of their obligations in accordance with said plan heretofore proposed and approval of which was recommended by the Referee in Bankruptcy.

V.

That the Atolia Mining Company, one of the creditors and the petitioner in reclamation in the

above-entitled proceeding, has relied on and accepted the plan heretofore approved and has executed the necessary instruments for conveyance of title in reliance thereon; that your proponent believes it is for the best interests of the corporation, for the stockholders and for the creditors of said corporation that no further delay be had in this matter, and that delay will be necessitated if a new plan is to be proposed in lieu of the plan submitted heretofore; that said Debtor corporation should not now be heard to object to the plan once approved by them, and approved by the Referee in Bankruptcy and approved by the above-entitled Court under Section 174 of the Act of Congress relating to bankruptcy; and further that the order entered by this Honorable Court on the 28th of November, 1950, provides that if confirmation of said plan is refused after said hearing, or any adjournment thereof, an order will be entered either adjudging said Debtor a bankrupt and directing that said bankruptcy be proceeded upon or dismissing the proceeding under Chapter 10 of said Act.

VI.

That this proponent has expended great amounts of time and has incurred much expenses in reliance on the findings of the Referee after approval by the Debtor in reorganization and in reliance on the execution of the original lease and option duly executed by said corporation and submitted to the Court for approval.

Wherefore, G. McGuire Pierce, your proponent, prays that the Objections filed by the Lincoln Mining Company, Inc., be disallowed and that the amended plan as heretofore proposed by this proponent be confirmed; that this proponent pay the creditors of said corporation as provided for in said plan; that the Debtor corporation issue the shares of stock to this proponent as heretofore proposed; that these proceedings be dismissed and the property returned to the Debtor corporation; and the lease and option heretofore entered into by and between the said corporation and this proponent be confirmed and approved by this Honorable Court.

HAWKINS & CANNON,

By /s/ L. D. HAWKINS,

Attorneys for Proponent.

State of Nevada,
County of Clark—ss.

G. McGuire Pierce, being by me first duly sworn, deposes and says:

That he is the proponent in the above-entitled action; that he has read the foregoing Reply to Objections and knows the contents thereof and that all the statements and averments of fact therein contained are true of his own knowledge, except those statements made upon his information and belief, and as to those he believes it to be true.

/s/ G. McGUIRE PIERCE.

Subscribed and sworn to before me this 15th day of December, 1950.

[Seal] /s/ HOWARD W. CANNON,
Notary Public in and for
Said County and State.

My commission expires March 17, 1952.

Receipt of copy acknowledged.

[Endorsed]: Filed December 19, 1950, Referee.

[Endorsed]: Filed December 21, 1950, U.S.D.C.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE FOR ORDER CONFIRMING PLAN OF REORGANIZATION NOTWITHSTANDING OBJECTIONS OF DEBTOR

At: Reno, in said district, this 29th day of December, 1950.

Upon the annexed findings and report of the Referee and Special Master in the above-entitled matter filed the 19th day of December, 1950, and sufficient reason appearing to me therefore, it is

Ordered that the Lincoln Mining Company, Inc., debtor, show cause before me in the United States District Court Room, Post Office Building, Las Vegas, Nevada, on the 2nd day of March, 1951, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why the amended

and approved plan of reorganization submitted by the debtor corporation should not be confirmed notwithstanding the objections of the debtor corporation filed December 15, 1950, and the reply thereon of G. McGuire Pierce, proposed lessee, filed December 19th, 1950; and it is further

Ordered that service of a copy of this order and the findings and report of the Referee and Special Master be made upon Morse and Graves, Esqs., attorneys for the debtor, upon Hawkins and Cannon, Esqs., attorneys for the proposed lessee, G. McGuire Pierce, upon J. Howard Gray, Esq., attorney for petitioner in reclamation, Atolia Mining Company, et al., on or before the 5th day of January, 1951, and that mailing a copy of this order, attached to the findings and report of the Referee to their address as of record in the office of the Clerk will be deemed good and sufficient notice hereof.

/s/ ROGER T. FOLEY,
District Judge.

[Endorsed]: Filed December 29, 1950.

[Title of District Court and Cause.]

MINUTES OF COURT
January 9, 1951

At request of counsel for the respective parties, It Is Ordered that the setting of March 2, 1951, for hearing on Order to Show Cause for Order Con-

firming Plan of Reorganization Notwithstanding Objections of debtor be, and the same hereby is, vacated, and reset for February 12, 1951, at ten o'clock a.m., Las Vegas, Nevada.

[Title of District Court and Cause.]

MINUTES OF COURT

February 5, 1951

Good cause appearing therefor, and no counsel being present. It Is Ordered that the hearing on Objections by Lincoln Mining Company, Inc., to Referee and Special Master's Report be, and the same hereby is, set for February 12, 1951, at ten o'clock a.m. at Las Vegas, Nevada, to follow Order to Show Cause.

[Title of District Court and Cause.]

MINUTES OF COURT

February 12, 1951

This being the time heretofore fixed for hearing on Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding Objections of Debtor; Objections by debtor to Referee's and Special Master's Report; and Petition for Allowances and Expenses of Referee and Special Master, and the same coming on regularly at this time. Harold M. Morse, Esq., and William R. Morse, Esq., of the firm of Morse & Graves, ap-

pearing for and on behalf of the debtor. W. Howard Gray, Esq., appearing for and on behalf of Atolio Mining Company, Howard W. Cannon, Esq., of the firm of Hawkins & Cannon, appearing for and on behalf of G. McGuire Pierce. Frank W. Ingram, Esq., Referee and Special Master, is also present. Mr. Morse tenders for filing, "Exceptions and Objections of Lincoln Mining Company, Inc., Debtor, to the Referee and Special Master's Report on Objections to Confirmation of Plan by debtor Corporation, and Reply to Objections by G. McGuire Pierce, Proposed Lessee, and Findings thereon and Return to Order to Show Cause," which the Court does not permit to be filed as coming too late.

The Court states that the objections heretofore filed by debtor on January 3, 1951, will be considered. The Order to Show Cause and Objections of Debtor to Referee and Special Master's Report are taken up first, including debtor's Motion to Dismiss the Proceedings. Arguments are made by Messrs. Wm. R. Morse, Cannon and Gray. It Is Ordered that all matters noticed for today be, and they hereby are, continued to February 19, 1951, at ten o'clock a.m. at Las Vegas, Nevada.

[Title of District Court and Cause.]

MINUTES OF COURT

February 19, 1951

This being the time heretofore fixed for a further hearing herein on Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding

ing Objections of Debtor; Objections by Debtor to Referee and Special Master's Report and Motion to Dismiss; and Petition for Allowances and Expenses of Referee and Special Master, and the same coming on regularly at this time. Harold M. Morse, Esq., and William R. Morse, Esq., of the firm of Morse & Graves, appearing for and on behalf of the debtor. Howard W. Cannon, Esq., of the firm of Hawkins & Cannon, appearing for and on behalf of G. McGuire Pierce. On motion of Mr. Cannon, It Is Ordered that Carl Grainger be, and he hereby is, entered as associate counsel for Mr. Pierce. Mr. Grainger is also present. Mr. Morse files receipts for checks mailed and delivered to creditors and others including Atolia Mining Company, et al. Following arguments of counsel for the respective parties, It Is Ordered that all matters heretofore noticed for today be, and the same hereby are, continued to February 26, 1951, at ten o'clock a.m., at Las Vegas, Nevada.

[Title of District Court and Cause.]

MINUTES OF COURT

February 26, 1951

This being the time heretofore fixed for a further hearing on Order to Show Cause for Order Confirming plan of Reorganization Notwithstanding Objections of Debtor; and Objections by Debtor to Referee and Special Master's Report, and the same coming on regularly this day. Harold M. Morse and

William R. Morse, Esqs., appearing for and on behalf of the debtor. Howard W. Cannon, Esq., appearing for and on behalf of G. McGuire Pierce. Curtis A. Thornburgh is called to the witness stand, is duly sworn, and testifies. After a discussion of the proceedings and of proposed findings indicated by the Court, It Is Ordered that all matters heretofore noticed herein are continued to March 9, 1951, at ten o'clock a.m., at Las Vegas, Nevada.

[Title of District Court and Cause.]

MINUTES OF COURT

March 9, 1951

This being the date to which this matter was continued for further hearing and consideration of Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding Objections of Debtor, and the same coming on regularly this day. Harold M. Morse, Esq., and William R. Morse, Esq., appearing for and on behalf of the debtor, and Howard W. Cannon, Esq., appearing for and on behalf of G. McGuire Pierce. It Is Ordered, Adjudged and Decreed: 1. That the confirmation of the said amended and approved plan of reorganization referred to in the Order to Show Cause herein be, and it hereby is, refused. 2. That the Lease and option agreement entered into on the 24th day of November, 1950, between Lincoln Mining Company, Inc., and G. McGuire

Pierce be, and the same hereby is, rejected and is hereby declared null and void and of no effect.

3. That in the event that the debtor corporation and G. McGuire Pierce do not agree within ten (10) days from date hereof as to the amount of reimbursement which should be paid to him for injuries resulting from the rejection of said plan and cancellation of the said lease, these proceedings will be referred to the Referee in Bankruptcy, Frank W. Ingram, for the purpose of hearing and considering and determining the proper amount to be paid to G. McGuire Pierce as such reimbursement.

4. That after the filing with the Clerk of this Court of proper vouchers exhibiting the payment by the debtor corporation of all approved claims of creditors, expenses of these proceedings, and reimbursement to G. McGuire Pierce in a sum agreed upon by the parties, or determined by the Referee or the Judge of this Court, the Judge of this Court will, after hearing upon notice to the debtor, stockholders, and creditors then remaining unpaid, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with or dismissing the proceedings as in the opinion of the Judge may be for the interests of creditors. The Court reserves jurisdiction of these proceedings to make such other and further orders under the Bankruptcy Act as to the Court may seem just and proper. Dated: This 9th day of March, 1951, at Las Vegas, Nevada. Roger T. Foley, United States District Judge. Thereupon, in open Court, the Judge signs the following, viz: Findings of Fact and Order refusing Confirmation of Plan.

[Title of District Court and Cause.]

DOCKET ENTRIES

1951

- Jan. 9—Entg. Order that the setting of March 2, 1951 for hearing on Order to Show Cause for Order Confirming Plan of reorganization notwithstanding objections of debtor is vacated and reset for February 12, 1951, at ten a.m., at Las Vegas.
- Feb. 5—Entg. Order Objections by Lincoln Mining Co., Inc., to Referee and Special Master's Report is set for hearing for Feb. 12, 1951, at ten o'clock a.m., at Las Vegas, Nev., to follow hearing on Order to Show Cause.
- Feb. 12—Hearing on Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding Objections of Debtor; Objections by Debtor to Referee and Special Masters Report; Petition for Allowances and Expenses of Referee and Special Master.
- Feb. 12—Entg. Order that all matters noticed for today are continued to Feb. 19, 1951, at ten a.m., Las Vegas, Nevada.
- Feb. 19—Further hearing on Order to Show Cause for Order Confirming plan of reorganization notwithstanding Objections of Debtor; Objections by Debtor to Referee and Special Master's Report and Motion

to Dismiss; and Petition for Allowances and Expenses of Referee and Special Master.

Feb. 19—Entg. Order that Carl Grainger is entered as associate counsel for Mr. Pierce.

Feb. 19—Entg. Order that all matters heretofore noticed for today are continued over to Feb. 26, 1951, at ten o'clock a.m., at Las Vegas, Nev.

Feb. 26—Further hearing on Order to Show Cause for Order Confirming plan of reorganization notwithstanding Objections of Debtor; and Objections by Debtor to Referee and Special Master's Report.

Feb. 26—Entg. Order that all matters heretofore noticed herein are continued to March 9, 1951, at ten o'clock a.m., at Las Vegas, Nev.

Mar. 13—Entg. Judgment at 9:30 a.m. Judgment: Ordered that the confirmation of the said amended and approved plan of reorganization referred to in the Order to Show Cause herein be, and it hereby is, refused. That the lease and option agreement entered into on the 24th day of November, 1950, between Lincoln Mining Company, Inc. and G. McGuire Pierce be, and the same hereby is, rejected and is hereby declared null and void and of no effect. That in the event that the debtor corporation and G. McGuire Pierce do not agree within ten (10) days from date hereof as

to the amount of reimbursement which should be paid to him for injuries resulting from the rejection of said plan and cancellation of the said lease, these proceedings will be referred to the Referee in Bankruptcy, Frank W. Ingram, for the purpose of hearing and considering and determining the proper amount to be paid to G. McGuire Pierce as such reimbursement. That after the filing with the Clerk of this Court of proper vouchers exhibiting the payment by the debtor corporation of all approved claims of creditors, expenses of these proceedings, and reimbursement to G. McGuire Pierce in a sum agreed upon by the parties or determined by the Referee or the Judge of this Court, the Judge of this Court will, after hearing upon notice to the debtor, stockholders, and creditors then remaining unpaid, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with or dismissing the proceedings as in the opinion of the Judge may be for the interests of creditors. The Court reserves jurisdiction of these proceedings to make such other and further orders under the Bankruptcy Act as to the Court may seem just and proper.

In the District Court of the United States of
America, in and for the District of Nevada

In Reorganization

No. A-60-A

In the Matter of

LINCOLN MINING COMPANY, INC.,

Debtor.

FINDINGS OF FACT AND ORDER REFUSING CONFIRMATION OF PLAN

“The order of the judge approving a plan, as provided in section 574 of this title, shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan.” 11 U.S.C.A. § 580.

“The plan of reorganization must be ‘fair and equitable.’ Such is the mandate of the statute (11 U.S.C.A. §621).” *Petition of Portland Electric Power Co.*, 9 Cir., 162 F. 2d 618.

In reorganization proceedings the purpose is rehabilitation of the debtor and to preserve it as a going concern if possible; therefore, it is vital that favorable leases be held and unfavorable leases be rejected. *Title Insurance & Guaranty Co. v. Hart*, 9 Cir., 160 F. 2d 961.

Sec. 116 of Chapter X (11 U.S.C.A. § 516 (1)) gives the judge power to permit the rejection of executory contracts. The term “executory contracts” includes leases. 11 U.S.C.A. § 506 (7).

“In case an executory contract shall be rejected

pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter * * * any person injured by such rejection shall, for the purposes of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor." 11 U.S.C.A. § 602.

This case came on to be heard on the 12th day of February, 1951, pursuant to the Order of this Court of December 29, 1950, directing Lincoln Mining Company, Inc., Debtor, to show cause on the 2d day of March, 1951, at 10:00 o'clock in the forenoon of that day at the courtroom of the above-entitled Court in the United States Post Office and Courthouse at Las Vegas, Nevada, why the amended and approved plan of reorganization should not be confirmed notwithstanding the objections of the debtor corporation filed December 15, 1950. By consent of counsel the date of hearing of said Order to Show Cause was advanced to February 12, 1951, by order entered upon the minutes of this Court and the said hearing commencing on the 12th day of February, 1951, was continued from time to time until this date.

Having considered the said objections of the debtor corporation filed December 15, 1950, and the reply thereto of G. McGuire Pierce filed December 19, 1950, together with the Report of the Referee and Special Master on said objections and reply, the Court hereby makes findings of fact as follows:

Findings of Fact

1. The Court accepts the Referee and Special Master's Finding No. 1 and No. 2.

2. That on or about the 6th day of November, 1950, by order of this Court the new plan proposed by G. W. Thiriot, President of Lincoln Mining Company, Inc., was considered and treated as the modification of the plan heretofore approved September 26, 1950, and the Court ordered that such new plan be filed as such modification and fixed the 21st day of November, 1950, at 9:30 a.m. as the time and the courtroom of the United States District Court at Las Vegas, Nevada, as the place for the consideration of such new plan or modification and for the hearing of objections thereto.

That the proposed modification of the original plan filed herein by G. W. Thiriot November 6, 1950, included therein as Paragraph V the following:

“Mr. George McGuire Pierce, 6057 Maryland Drive, Los Angeles, California 36, makes the proposition to pay off the indebtedness of Lincoln Mining Company, Inc., in return for a bond and lease on the property, buildings, machinery, etc., for a period of ten (10) years. A total purchase price of \$150,000.00 payable from royalties at the rate of 10% on net returns to apply on purchase price. A contract to be worked out and executed if sanctioned by the court.”

3. That on the 21st day of November, 1950, and

at the place set for the consideration of said modified plan, the said G. McGuire Pierce, without prior notice to the corporation or its officers or stockholders or any of the creditors of the corporation, presented a written proposal to said corporation which is summarized as follows:

The said corporation be directed to issue 75,000 shares of its capital stock, held and unissued by said corporation as treasury stock, to the said G. McGuire Pierce; that a lease had been prepared on the mining property, the property of this corporation, by the attorneys representing the said G. McGuire Pierce, and was presented to the officers of this corporation for their signature on said date, the 21st day of November, 1950; and that the said G. McGuire Pierce would pay in cash to the Atolia Mining Company the sum of \$7700.00 to secure a full release from said company of all of their claims against the debtor corporation; that he would advance the sum of \$10,000.00 to pay all of the remaining creditors of the debtor corporation; that present at said court hearing before the Referee and Special Master were all the officers and directors of the debtor corporation, and as they were then and there informed by the said G. McGuire Pierce that the lease he had drawn and his proposal were final insofar as he was concerned, the said officers and directors of said corporation and its stockholders, therefore, accepted said modified plan. That said acceptance was made without full and careful consideration of the best interests

of the corporation, its stockholders, and its creditors.

4. That on the 29th day of November, 1950, with the consent of all the parties hereto and without objection of the debtor corporation, Lincoln Mining Company, Inc., the Judge of this Court made and entered an Order approving offer and plan of reorganization, said plan of reorganization being in substance the offer to debtor in reorganization filed in the office of the Clerk of the above-entitled Court November 29, 1950; that said plan so approved included a lease and option agreement entered into November 21, 1950, between the debtor corporation as lessor and G. McGuire Pierce as lessee. That by virtue of said lease the lessor leased all of the patented and unpatented mining claims therein described for a period of 20 years commencing on the 25th day of November, 1950, and continuing to the 24th day of November, 1970, with the privilege of renewal for a further period of 20 years. That for the use and occupation of the leased premises, the lessee was to pay lessor a rental or royalty from the net returns of ore or other products of said leased premises. That by the terms of said lease the lessee is given an option to purchase the leased premises for the total purchase price of \$150,000.00. That no work requirements are contained in said lease or plan of reorganization and by the terms of said lease and plan of reorganization the lessee could remain in control of and in possession of all of the properties of the said debtor corporation described in said lease for as long as 40 years without performing work or labor on said mining property

other than that which from time to time might be required under the laws of the United States and the State of Nevada and on the unpatented mining claims described in the lease.

That if work and labor were not performed upon said property, and particularly upon the patented mining claims described in said lease, the property would deteriorate in value and become of little or no value to said debtor corporation or to the stockholders of said corporation.

5. That said plan provides in addition to the lease above-mentioned that the debtor corporation shall transfer free and clear to the lessor, G. McGuire Pierce, 75,000 shares of the treasury stock of the said corporation; that the capital stock authorized to be issued by said corporation is 300,000 shares of stock, and said plan further provides that the said lessee shall have a first claim for all royalties due under the lease until lessee has been repaid all sums advanced to said debtor as provided for in said plan.

6. That the debtor corporation now finds itself financially able to pay all legal claims against it including the claim of the Atolia Mining Company for machinery and equipment and the administrative expenses incurred in these proceedings; and upon the hearing of this Order to Show Cause, the debtor corporation exhibited its ability and willingness to immediately pay claims of creditors and satisfy the claim of the Atolia Mining Company and the administrative expenses incurred in these pro-

ceedings, and exhibited its ability and willingness to make reasonable reimbursement to G. McGuire Pierce for monies actually expended after November 29, 1950, in furtherance of and pursuant to said plan.

7. That the plan of reorganization approved by the Judge of this Court November 29, 1950, under the conditions as they now exist is not fair or equitable.

8. That the lessee in said lease, G. McGuire Pierce, is entitled to be reimbursed, after November 29, 1950, the date the Order of this Court was entered approving the proposed plan of reorganization, for monies actually expended in furtherance of and pursuant to said plan.

9. That with the Order to Show Cause herein there was served the Findings and Report of the Referee and Special Master to which was attached the objections by Lincoln Mining Company, Inc., Debtor, to confirmation of the modified plan of G. McGuire Pierce, said objections having been filed with the Referee and Special Master December 15, 1950.

10. As to Finding No. 3 of the Referee and Special Master, the Court will not adopt such finding for the reason that it appears to the Court that the plan approved will not insure commencement of the operation of the property and said plan would place it within the power of the lessee to refrain from operation of the property for as long as 40 years.

It Is Therefore Ordered, Adjudged and Decreed:

1. That the confirmation of the said amended and approved plan of reorganization referred to in the Order to Show Cause herein be, and it hereby is, refused.

2. That the lease and option agreement entered into on the 24th day of November, 1950, between Lincoln Mining Company, Inc., and G. McGuire Pierce be, and the same hereby is, rejected and is hereby declared null and void and of no effect.

3. That in the event that the debtor corporation and G. McGuire Pierce do not agree within ten (10) days from date hereof as to the amount of reimbursement which should be paid to him for injuries resulting from the rejection of said plan and cancellation of the said lease, these proceedings will be referred to the Referee in Bankruptcy, Frank W. Ingram, for the purpose of hearing and considering and determining the proper amount to be paid to G. McGuire Pierce as such reimbursement.

4. That after the filing with the Clerk of this Court of proper vouchers exhibiting the payment by the debtor corporation of all approved claims of creditors, expenses of these proceedings, and reimbursement to G. McGuire Pierce in a sum agreed upon by the parties, or determined by the Referee or the Judge of this Court, the Judge of this Court will, after hearing upon notice to the debtor, stockholders, and creditors then remaining unpaid, enter an order either adjudging the debtor a bankrupt

and directing that bankruptcy be proceeded with or dismissing the proceedings as in the opinion of the Judge may be for the interests of creditors.

The Court reserves jurisdiction of these proceedings to make such other and further orders under the Bankruptcy Act as to the Court may seem just and proper.

Dated: This 9th day of March, 1951, at Las Vegas, Nevada.

/s/ ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed March 9, 1951.

In the United States District Court,
District of Nevada
No. A-60-A

In the Matter of
LINCOLN MINING COMPANY, INC., a Corporation,
Debtor.

G. McGUIRE PIERCE,

Appellant,

vs.

LINCOLN MINING COMPANY, INC., a Corporation, Debtor,

Appellee.

NOTICE OF APPEAL

To: The Honorable Roger T. Foley, United States District Judge, to Lincoln Mining Company,

Inc., a corporation, Debtor, and to John S. Halley, Esquire, Reno, Nevada, and Morse and Graves, Las Vegas, Nevada, its attorneys of record, and to Amos P. Dickey, Clerk of the above-entitled Court:

You and each of you will please take notice and notice is hereby given that G. McGuire Pierce hereby appeals to the United States Court of Appeals for the Ninth Circuit from that order, final judgment and decree and each and every part thereof and the whole thereof entered in the bankruptcy docket of the above-entitled court on the 13th day of March, 1951, at pages 198 and 199 of said bankruptcy docket, which said order, final judgment and decree was signed by the Honorable Roger T. Foley, Judge of the above-entitled court on the 9th day of March, 1951, and was entered in the Court Minutes of that day in the General Minute Journal #1, Las Vegas Minutes at page 271 and designated "Findings of Fact and Order Refusing Confirmation of Plan."

Dated at Carson City, Nevada, this 7th day of April, 1951.

HAWKINS, AND CANNON,

KYLE Z. GRAINGER,

By /s/ KYLE Z. GRAINGER,

Attorneys for Appellant.

[Endorsed]: Filed April 7, 1951.

[Title of District Court and Cause.]

STIPULATION OF PORTIONS OF THE RECORD PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON APPEAL

It Is Hereby Stipulated and Agreed by and between G. McGuire Pierce, appellant in the above-entitled matter, and Lincoln Mining Company, Inc., a corporation, debtor, appellee in said proceeding, by and through their respective attorneys, that the portions of the record proceedings and evidence to be contained in the record on appeal to the United States Court of Appeals for the 9th Circuit from the Order, Judgment and Decree appealed from in the above-entitled proceeding, shall be as follows:

1. Petition for Corporate Reorganization under Chapter X, filed March 22, 1950.
2. Order Approving Petition and Continuing Debtor in Possession, filed March 22, 1950.
3. Order of Reference to Frank W. Ingram, Referee and Special Master, filed March 22, 1950.
4. Proposal of Plan for Reorganization of Lincoln Mining Co., Inc., Debtor, filed June 30, 1950.
5. Copy of Supplement to Proposal of Plan of Reorganization, filed July 14, 1950.
6. Order for Hearing on Objections or Amendments to Plan Proposed by Debtor in Possession under Section 170 of the Bankruptcy Act, filed July 27, 1950.

7. Report of Referee and Special Master on Hearings on Objections or Amendments to Plan under Section 170 and for Continuance of Debtor in Possession under Section 162 of Bankruptcy Act, filed September 22, 1950.

8. Order Approving Plan of Reorganization, filed September 26, 1950.

9. Proposal of Plan for Reorganization of Lincoln Mining Company, Inc., Debtor (dated October 31, 1950, filed November 6, 1950), submitted by G. W. Thiriot, President of Lincoln Mining Company, Inc., attached to which is Plan of Reorganization Lincoln Mining Company, Inc. Both Proposal of Plan and Plan attached to be included in record on appeal.

10. Order (dated 6th day of November, 1950, signed by Roger T. Foley, United States District Judge), filed November 6, 1950, ordering that new plan proposed by G. W. Thiriot, President of Lincoln Mining Company, Inc., be considered and treated as a modification of the plan heretofore approved September 26, 1950. Order fixed 21st day of November, 1950, as the time in the Court Room of the United States District Court at Las Vegas as place for the consideration of the new Plan of Reorganization and for hearing of objections thereto.

11. Order captioned "Order Extending Times for filing of Claims and Acceptances and for Hearing Objections to Alteration and Modification of Plan and for Confirmation of Such Altered Plan and for Notice of Hearing Thereon," signed by

Frank W. Ingram, Referee and Special Master, and filed on November 6, 1950.

12. (a) Offer to Debtor in Reorganization. (Filed November 29, 1950, in the office of the Clerk at Carson City, and on November 21, 1950, with Referee Ingram. Offer signed by G. McGuire Pierce, dated 21st day of November, 1950).

(b) An Amended Offer to Debtor in Reorganization. (Filed Nov. 29, 1950, Clerk's Office, Carson City, and on November 27, 1950, with Referee in Bankruptcy, dated 22nd day of November, 1950, signed by G. McGuire Pierce by Howard W. Cannon, Attorney at law.)

13. Lease and Option Agreement (filed November 29, 1950, with Clerk at Carson City, dated 21st day of November, 1950, executed by Lincoln Mining Co., Inc., a Nevada Corporation, as Lessor, by G. W. Thiriot, President, by Eva Koyen, Secretary, G. McGuire Pierce as Lessee. All duly notarized.)

14. Findings and Report of Referee. (Filed November 29, 1950, Clerk, Carson City. Dated 28th day November, 1950, Frank W. Ingram, Referee and Special Master).

15. Order Approving Offer and Plan of Reorganization (Filed Nov. 29, 1950, Amos P. Dickey, Clerk, dated 28th day of November, 1950, Roger T. Foley, Judge.)

16. Order Fixing Hearings on Confirmation of Plan and Dismissal of Proceedings or Adjudication and Providing for Notice Thereof. (Filed Novem-

ber 29, 1950, with Clerk at Carson City, dated November 28, 1950, Frank W. Ingram, Referee and Special Master, Roger T. Foley, District Judge.)

17. Referee and Special Master's Report on Objections to Confirmation of Plan by Debtor Corporation and Reply to Objections by G. McGuire Pierce, Lessee, and Findings Thereon. (Filed December 21, 1950, Clerk at Carson City, not dated, signed Frank W. Ingram, Referee in Bankruptcy. Attached to this instrument is Objections by Lincoln Mining Company, Inc., a corporation, Debtor, to Approval or Confirmation of the Altered and Modified Plan of G. McGuire Pierce, showing original to have been filed Dec. 15, 1950, with Frank Ingram, Referee. Attached also to said instrument is Reply to Objections by Lincoln Mining Company, Inc., a corporation, Debtor, to approval or Confirmation of the Altered and Modified Plan of G. McGuire Pierce, showing original to have been filed December 19, 1950, Frank W. Ingram, Referee. Both Referee and Special Master's Report and attached instruments to be included in Record on Appeal.)

18. Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding Objections of Debtor. (Filed December 29, 1950, Amos P. Dickey, Clerk at Carson City, Nevada, dated 29th day of December, 1950, signed by Roger T. Foley, District Judge.)

19. Minute Order January 9, 1951, entered in General Minute Journal #5, Carson City Minute Journal, at Page 501, and entry thereof on January

9, 1951, in Bankruptcy Docket of said Court at page 198, "Eng Order that setting of March 2, 1951, for hearing on order to show cause for order confirming plan of reorganization notwithstanding objection of debtor is vacated and reset for February 12, 1951, at 10:00 a.m., at Las Vegas."

20. Order entered February 5, 1951, in Bankruptcy Docket as follows: "Enty. Order Objections by Lincoln Mining Co., Inc., to Referee and Special Master's Report is set for hearing for Feb. 12, 1951, at 10 o'clock a.m., at Las Vegas, Nev., to follow hearing on order to show cause."

21. Minute Order of February 12, 1951, entered in General Minute Journal #1, Las Vegas Minute Journal at page 245 and entry thereof on Feb. 12, 1950, in Bankruptcy Docket at page 198 "Hearing on Order to show cause for order confirming plan of Reorganization notwithstanding objections of debtor to Referee and Special Master's Report; petition for allowance of expenses of Referee and Special Master Entg. Order that all matters noted for today are continued to Feb. 19, 1951, at 10:00 a.m., at Las Vegas, Nevada."

22. Minute Order of Feb. 19, 1951, entered in General Minute Journal #1, Las Vegas Minutes at pages 250-251 entitled "In the Matter of Lincoln Mining & Milling Company, Debtor," and entry thereof in Bankruptcy Docket page 198 "Further hearing on order to show cause for order confirming plan of reorganization notwithstanding objections of debtor; objections of debtor to Referee and Spe-

cial Master's Report and motion to dismiss; petition for allowances and expenses of Referee and Special Master. Entg. order that Carl Grainger is entered as associate counsel for Mr. Pierce. Entg. order that all matters heretofore noticed for today are continued over to February 26, 1951, at 10:00 a.m., at Las Vegas, Nevada."

23. Minute Order of February 26, 1951, at Page 255 General Minute Journal #1, Las Vegas Minutes and entry thereof in Bankruptcy Docket Feb. 26, 1951. "Further hearing on order to show cause for order confirming plan of reorganization notwithstanding objections of debtor; and objections by debtor to Referee and Special Master's Report. Entg. order that all matters heretofore noticed herein are continued to March 9, 1951, at 10:00 a.m., at Las Vegas, Nevada."

24. Minute Order of March 9, 1951, entered in General Minute Journal #1 Las Vegas at Page 271, and entry thereof of March 13, 1951, in Bankruptcy Docket at Pages 198 and 199.

25. Findings of Fact and Order Refusing Confirmation of Plan (filed March 9, 1951, at Carson City, Amos P. Dickey, Clerk, dated 9th day of March, 1951, Roger T. Foley, United States District Judge).

26. Notice of Appeal (filed April 7, 1951).

27. Stipulation of Certain Facts for use on Appeal.

28. Reporter's transcript designated "Hearing

on Objections to Altered Plan” of hearings held November 21, 1950, and continued hearing held November 22, 1950.

29. Reporter’s transcript of “Portion of Hearing of December 15, 1950, Relating to Confirmation of Plan of Reorganization.”

30. Statement of Points upon which Appellant will rely upon Appeal filed April 7, 1951.

Dated: This 26th day of April, 1951.

HAWKINS & CANNON,

By /s/ H. W. CANNON.

GRAINGER, CARVER &
GRAINGER,

By /s/ KYLE Z. GRAINGER,
Attorneys for Appellant.

JOHN S. HALLEY, and

MORSE & GRAVES,

By /s/ WILLIAM R. MORSE,
Attorneys for Appellee.

[Endorsed] Filed April 30, 1951.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

Whereas, G. McGuire Pierce has filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from that order, final judgment and decree and each and every part thereof and the whole thereof, entered in the bankruptcy docket of the above-entitled court on the 13th day of March, 1951, at pages 198 and 199 of said bankruptcy docket, which said order, final judgment and decree was signed by the Honorable Roger T. Foley, Judge of the above-entitled court, on the 9th day of March, 1951, and was entered in the Court Minutes of that day in the General Minute Journal #1, Las Vegas Minutes at page 271 and designated "Findings of Fact and Order Refusing Confirmation of Plan";

Further, Know all Men by These Presents that we, as sureties, our successors, jointly and severally, are held and firmly bound unto Lincoln Mining Company, Inc., a corporation, debtor, in the full and just sum of \$250.00 to be paid to the said Lincoln Mining Company, Inc., a corporation, debtor, its successors and assigns to which payment, well and truly to be made, we bind ourselves by these presents.

Now, the condition of this obligation is such that if the said G. McGuire Pierce shall prosecute his appeal to effect and shall pay costs if the appeal is dis-

missed or the judgment affirmed or such costs as the said United States Court of Appeals, for the Ninth Circuit may award against the said G. McGuire Pierce if the judgment is modified, or in any other event, then this obligation to be void, otherwise to remain in full force and effect.

Dated, this 7th day of April, 1951.

[Seal] HARTFORD ACCIDENT AND
INDEMNITY COMPANY,

By /s/ J. S. SLINGERLAND,
Attorney in Fact.

State of Nevada,
County of Washoe—ss.

On this 6th day of April, A.D. 1951, personally appeared before me, a Notary Public in and for Washoe County, State of Nevada, J. E. Slingerland Attorney in Fact, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of Hartford Accident and Indemnity Company and acknowledged that he subscribed the name of said Hartford Accident and Indemnity Company thereto as Principal, and his own name as attorney-in-fact freely and voluntarily for the uses and purposes therein mentioned; that said J. E. Slingerland is known to me to be the attorney-in-fact duly authorized to execute the same on behalf of said Hartford Accident and Indemnity Company, a corporation, and said J. E. Slingerland upon oath did depose that he is the attorney-in-fact for said corporation as above designated; that he

is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county aforesaid, the day and year in this certificate first above written.

[Seal] /s/ WYMAN EVANS,
Notary Public in and for the County of Washoe,
State of Nevada.

My commission will expire April 22, 1954.

[Endorsed]: Filed April 7, 1951.

[Title of District Court and Cause.]

STIPULATION OF CERTAIN FACTS FOR
USE ON APPEAL

It Is Hereby Stipulated and Agreed by and between Lincoln Mining Company, Inc., a corporation, debtor, appellee, and G. McGuire Pierce, appellant above named, by their respective attorneys, as follows:

1. That this stipulation shall not nor shall anything contained in it prejudice any right that the appellee may have to urge and contend that G. McGuire Pierce, appellant herein, is without right of appeal in this proceeding and shall not bar appellee from obtaining a determination as to whether said G. McGuire Pierce has a right of appeal in respect to the order appealed from. The "Stipulation of Portions of the Record Proceedings and Evidence To Be Contained in the Record on Appeal" shall likewise be without prejudice to such right of appellee to so contend and have determined such right of appeal.

2. That all proceedings commencing with the filing of Debtor's petition for corporate reorganization to and including the making of the "Order Approving Plan of Reorganization," filed September 26, 1950, were due and regular.

3. That upon the hearings before the Honorable Judge on "Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding Objections of Debtor," extensive arguments of coun-

sel were heard before the Honorable Judge; that although the transcripts of the hearings before the Referee and Special Master on November 21, 1950; November 22, 1950, and December 15, 1950, were not formally introduced in evidence, the transcripts were considered and referred to by the Honorable Judge during the hearings held before him, resulting in the Order appealed from in this proceeding.

Evidence was duly presented to the Court and proper vouchers filed with the Clerk of the Court, evidencing the payment of all of the claims filed against the corporation and allowed by the Referee, including the claim of Atolia Mining Company. The total of said indebtedness so paid and the receipts so filed is the sum of \$20,037.59, and that in addition thereto there was paid to the Clerk of the Court for the costs of administration in this case, pursuant to the statement of the Referee and Special Master, the sum of \$1,879.27, making a total of all payments in the sum of \$22,186.86.

That additional testimony given and received in said hearings before the Honorable Judge was the testimony of Curtis A. Thornburgh, Auditor for the Debtor corporation, whose testimony in effect was that the debtor corporation had paid all its operating expenses incurred by it as debtor in possession, with the exception of one claim, and that concentrates were on hand from which more than sufficient funds would be obtained with which to pay such claim.

That prior to the making of said Order appealed

from, said Debtor paid no sum of money to G. McGuire Pierce, appellant herein, who claims and has claimed interest and rights as contended in the appeal. The Debtor corporation, at the time of the making of the order appealed from in this proceeding, was and still is, financially able to pay the sums required by said order to be paid to the said G. McGuire Pierce.

4. The record on appeal, including the matters set forth in this Stipulation, constituted the evidence considered by the Honorable Judge in making the order and decree appealed from in this proceeding.

HAWKINS & CANNON,

By /s/ H. W. CANNON.

GRAINGER, CARVER &
GRAINGER,

By /s/ KYLE Z. GRAINGER,
Attorneys for Appellant.

JOHN S. HALLEY, and
MORSE & GRAVES,

By /s/ WILLIAM R. MORSE,
Attorneys for Appellee.

[Endorsed]: Filed April 30, 1951.

[Title of District Court and Cause.]

HEARING ON OBJECTIONS TO
ALTERED PLAN

November 21, 1950

Before: Honorable Frank W. Ingram,
Referee in Bankruptcy.

Appearances:

HAROLD M. MORSE, ESQ., on behalf of:
JOHN S. HALLEY, ESQ., and
MESSRS. MORSE and GRAVES,
Attorneys for Debtor.

W. HOWARD GRAY, ESQ., on behalf of:
MESSRS. GRAY & HORTON,
Attorneys for Atolia Mining Co., et al.

HOWARD W. CANNON, ESQ.,
Representing G. McGuire Pierce, Lessee.

Referee: Since our last meeting, the Referee made a report to the Court. At the last hearing, the motion of the debtor to dismiss the petition of Atolia Mining Company for reclamation, was denied, and the debtor was given twenty days in which to answer or otherwise plead to the petition. There was no objection to the debtor's remaining in possession under Section 161, Title 11, on Reorganization, and as a result of that hearing, the Referee made his report to the Court under Sections 161 and 170,

and after modification of the plan disclosed at that meeting, the Court made its Order approving that plan, on recommendation of the Referee, with instructions that copies of the reorganization plan be sent out to the creditors with certain findings, opinions and summary and forms of acceptance, under Section 175, the Court having approved that plan. An affidavit of mailing by the debtor is in the record, and thereafter one G. W. Theriot, President of the Lincoln Mining Company, holding fifty per cent of the stock, filed a proposal for alteration and modification of the approved reorganization plan, and on the 6th day of November, 1950, the Referee filed an Order extending the time theretofore granted for the filing of those notices of acceptance from the 10th day of November to the 18th day of November, and set up this time and place as the time to hear any objections to the altered plan which had been approved by the Court.

It was further ordered that any stockholders and creditors who previously accepted the plan of reorganization and modification would be deemed to accept this altered plan unless they specifically rejected the altered or modified plan.

That thereafter, on the 6th day of November, 1950, a notice of hearing and consideration of the alteration and modification of the plan of George W. Theriot, President, was sent to all creditors and stockholders by the Referee, and in that was summarized the proposed changes and alterations on the proposition submitted by George McGuire Pierce, and contained in Mr. Theriot's plan of reorganization. Notice was given of the hearing under

Sections 170 and 175, and also on the hearing of the Atolia petition.

As of the 18th of November, 1950, the final date for the filing of claims, the Court received some twenty-seven claims of creditors, including Claim No. 15, Theriot Brothers, for \$4,559.60; No. 16, G. W. Theriot, for \$1,769.10, and Claim No. 17, Dean P. Theriot, in the amount of \$1,664.16. [2]

Thereafter objections were made to those particular claims, and for the purpose of this meeting, they are not approved.

The claim of Wesley Koyen, No. 25, in the amount of \$7,085.77, was not verified or itemized as required by the statute, and failed to give the years in which the work was claimed, and was not itemized, and that claim was not approved for the purpose of this meeting.

The balance of the claims, some \$10,100.00—something of that nature, have been filed. Of that amount, more than seventy-five per cent of those creditors have accepted the plan, that is, the altered and revised plan. The statute requires a hearing on confirmation of the plan, Section 179 (reads)—after a plan has been accepted in writing, and filed in Court, on behalf of creditors holding two-thirds of the claims filed and allowed * * * and if the debtor is not found * * * stockholders holding a majority of the stock, then after this hearing, if there are no objections to the plan, the Court may make its Order confirming it, and give the debtor a certain time in which to consummate the plan.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

Are there any objections to the ultimate plan, and if so, let us have it right now. I don't know whether all the stockholders know what the alterations are now, and if not, I'll ask Mr. Morse to read them and summarize it.

Mr. Morse: I think there's a good summarization of that, your Honor, in your Notice.

Referee: Are there any questions the creditors would like to ask?

Mr. Cannon: This is not for the purpose of asking a question, Judge, but I might state that the plan as disclosed by Mr. Theriot—we consider our offer to the debtor in reorganization that was filed with the Court this morning as supplementing that plan in detail, inasmuch as the proposed plan was not specifically in detail in some particulars, and that is the condition [3] on which the offer in reorganization is made, the offer presented to the Court this morning.

Referee: Will you explain that to the creditors?

Mr. Cannon: I think probably reading the offer would best explain it, and then I can elaborate on it if necessary (reads). The offer to the debtor in reorganization was accompanied by a proposed lease, and my suggestion would be that copies be made available to any of the creditors or stockholders who may desire it, and if we do recess until the afternoon, they would have an opportunity to examine it.

Referee: I think if the stockholders accept the proposal, your statement, as far as the creditors are concerned, they will be taken care of, and my list,

up to and including \$10,000.00 of claims which are subsequently approved by the Court—the understanding being that those creditors will be paid. I don't know if the creditors will be too much interested in having the details of the agreement between the proprietor and Mr. Pierce.

Mr. Cannon: I might state that the offer of \$10,000.00 would be sufficient to pay the claims that were listed as obligations of the corporation in Paragraph 4 of the Proposal that was filed with the Court on November 6th. In that list of obligations, there were no amounts set forth after the names of the Theriot Brothers, Wesley Koyen or G. W. Theriot, which were some of the claims which the Court had not approved or accepted at this time for the purpose of this hearing; also a general statement of the sum of \$5,000.00 for labor claims, and I am led to believe that the labor claims that have been filed will not exceed that amount.

Referee: It is my understanding that when I put the Order on them to segregate that item in their original submission, that they wrote it down, and I think we have a record of those, and they estimated \$5,000.00, and when you audited it, it came to [4] \$3,100.00.

Mr. Morse: I think that's substantially correct.

Referee: I recollect there was not sufficient time to notify the creditors of these proceedings, so we got a supplemental schedule to their original plan of reorganization, and as I recall, it's something like \$3,100.00.

Mr. Cannon: It would appear that the \$10,000.00 would be sufficient, excluding the matter between

the Atolia Mining Company and Lincoln Mining Company, and excluding the matter between Clark County Wholesale—which the proponent, Mr. Pierce, proposes to either pay or assume the contract for with the Clark County Wholesale, as they may desire. The proposition also provided that a bond would be furnished to secure the Atolia Mining Company in any sums that they may determine to be due them. I don't believe that I need make any further explanation. If any one has any questions to ask concerning any particular portion, I would be happy to go over it—

Mr. Gray: May it please the Court and Counsel, I am not appearing as a creditor or one interested in this plan except as to Paragraph "C," which proposes to pay up a surety bond to satisfy any indebtedness which may be due Atolia. Atolia does not recognize the Lincoln Mining Company as one of its debtors at all. Our business is entirely with Mr. Koyen and Mr. Theriot, and the proposition of a surety bond does not meet with the approval of Atolia. The plan is satisfactory otherwise, and there is no doubt but that Mr. Pierce and Mr. Atolia can get together. I can say, however, that I think the idea of a surety bond does not appeal to Atolia.

Mr. Morse: I would suggest, your Honor, that the matter be continued. I talked with Mr. Gray yesterday, and we definitely agreed that his petition to reclaim the property would come up for approval, and if it was approved, then we would have an opportunity [5] to serve as Mr. Pierce's counsel and also the stockholders, and see what we can work out.

Mr. Gray: That understanding is correct, your

Honor, but before we get away, your Honor, we desire that the objection be submitted.

(Recess from 12:00 noon until 2:00 p.m.)

2:00 o'Clock P.M.

Mr. Morse asks the indulgence of the Court to talk over the lease with the interested parties.

Granted.

* * *

Mr. Morse: It is the opinion of the Board of Directors of the Corporation that the plan be accepted and the lease signed.

Referee: Under Section 179—two-thirds of the creditors accepted the modified plan of reorganization, and one hundred per cent of the stockholders have accepted and approved the altered plan. Mr. Morse announces that the offer to the debtor in reorganization, with a copy of the proposed agreement, has been accepted by the stockholders. Have you signed the lease and option agreement?

Mr. Morse: No, but we will do so, your Honor.

Referee: I will need an additional copy of the Offer of Reorganization with the signed copy of the agreement attached. I would prefer to have the original agreement to attach to the offer, and one copy of the report. We will make my copy conform to the one you signed, and if you give me two copies of the agreement, I shall be happy to file it.

Mr. Cannon: May I point out to the Court that Paragraph "C" of the proposed offer apparently will have to be adjusted because of Mr. Gray's decision, and we would like the Court to sit in as Referee on that because that is something between the stockholders and Mr. Gray's corporation. Mr.

Gray has advised [6] that he does not feel that the surety bond should be accepted.

Referee: Mr. Gray is not the principal—and see what can be done under that Section.

Mr. Cannon: May we also ask the Court, please, as part of the Order, that in the acceptance, the officers and directors of the Corporation be directed to execute a promissory note and a realty mortgage, securing the same within a reasonable time after the amount of the note can be determined, in accordance with the proposal now before the Court.

Referee: So Ordered. You understand this matter has to go up with my report to the Judge, and he signs the Order.

Mr. Morse: All the Corporation need sign is the lease itself. Will four copies be sufficient?

Referee: I'll need two at least, and one for Mr. Pierce.

Mr. Cannon: And also, Judge, as part of that Order, we recommend to the Court that the officers and directors of the Corporation be authorized and instructed to issue a certificate for the remaining 75,000 shares of Treasury Stock to Mr. G. McGuire Pierce, on the consummation of this transaction, showing him to be the principal and lawful owner.

Referee: That will be the Order of the Court, and confirmation of the proposal, and I might state to you gentlemen that an Order be prepared for submission to the Court, and that it contain all you want in it, and I will send it to the Court for approval.

Mr. Cannon: In the payment of the bills, Judge,

the Court will authorize and approve those, together with a member of the Corporation—or what do you prefer?

Referee: In view of the fact that the creditors are to be paid moneys due them, you can handle it on the signature of the Referee, with a certain officer—or Mr. Pierce can sign and be an officer of the Corporation, but I don't want to obtain [7] bills which do not pay off the creditors. Now, you can do whatever you please in the proposed Order. You want the Court to supervise the creditors and see that others aren't paid, and moneys deposited. Let us not make a requirement for the Court to pay the contracts for the next two or three years.

Mr. Cannon: If the Court please, may we suggest that the moneys be paid into the Court, and that the claims to be paid, payment authorized directly by the Court of the claims approved by the present Corporation.

Referee: In other words, you want me to handle that money in trust and pay it?

Mr. Cannon: I think that would probably be best, Judge.

(Discussion off the record.)

Referee: It will be the Order of the Court that the money deposited by Mr. Pierce be placed in the First National Bank of Nevada, which is the depository of the bankruptcy funds, and withdrawn on the co-signatures of the Lincoln Mining Company and Mr. Pierce, as Lessee, and shall only be paid from that trust fund on claims which are approved by the Referee.

Mr. Cannon: Does your Honor have any idea how soon this lease would be approved by the Court, so that we can decide on an effective date?

Referee: No. I can tell you if you get out the Order, with three copies of the offer, I shall make my recommendation to the Court that the plan be confirmed and the agreement be approved. Under my Order, you are given ten days in which to object to the Order. You can waive that by advising the Court when you send that Order to me, that you have seen the proposed Order and do not object, and that applies to the Corporation; Mr. Gray represents them—as well as to Mr. Pierce. It appears to me that it is not going to take very long to consummate your plan either. As soon as you do the things the Court orders for you to do, [8] the Court will give you confirmation of your plan, and you will immediately go ahead and dismiss the reorganization proceedings. Mr. Gray, the Corporation has accepted the plan, and the matter before the Court is Paragraph “C” of the Order, which is the surety bond.

Mr. Gray: Your Honor, we do not believe the surety bond is what we want. I am in a position to make this offer to Mr. Pierce, and that is, Atolia will convey to Mr. Pierce its title to the property covered by the Conditional Sales Contract. There is now due on that contract, as we calculated, \$6,000.00 principal, plus \$1,013.95 interest, and we will make this kind of a proposition—\$2,000.00 down, and the balance payable in monthly payments, with interest as provided in the present contract.

Referee: What is the set rate?

Mr. Gray: Six per cent on the deferred payments, and then after the total payment is due, there's ten per cent penalty.

Referee: I don't believe the 10% is allowable, in view of the fact that the Corporation is in reorganization. How long are you basing that 6% on?

Mr. Gray: It has run since the contract was written, your Honor.

Referee: When did you raise this 10%?

Mr. Gray: We didn't raise it. The contract provides for that. The contract was written on the 3rd day of December, 1948. The first payment of \$2,000.00 was due on or about the 31st day of December, 1948, and the balance was in monthly payments of \$333.33, with 6% after the total becomes due. It took about a year to run, and then it provided for the penalty of 10% on the balance due.

Referee: When does that 10% start?

Mr. Gray: The contract provides that the unpaid balance—and each of the installments thereafter, at the rate of 6% from [9] the date thereof, but in the event that it shall not be paid, each of said installments shall bear the rate of 10% from the date of maturity thereof until paid. That was the contract, your Honor.

Mr. Cannon: How about the additional claims?

Mr. Gray: The additional items, if satisfactory, I'll make this proposition—There's credit to Theriot's of \$2,034.75 as royalty due them but which we have credited against the amounts due Atolia. There's a total of \$8,704.91. There's a total amount

on this series of items of \$8,931.13, giving credit to Theriot and Koyens for \$2,034.75 on royalty. Now, if you want to wind the whole thing up—all the items—we'll throw off the interest, which leaves a balance of \$7,887.75. That covers everything except the pending suit in the Seventh District Court, County of Lincoln, Pioche.

Referee: And that's against you by Theriot and Koyens.

(A short recess is taken to talk the matter over.)

* * *

Mr. Cannon: Judge, in view of the fact that Atolia will not accept Paragraph "C" of our proposed offer, we have worked out an additional proposal to be inserted in lieu of Paragraph "C" at this time, and if Atolia accepts, fine, and if not, we will take other steps. The proposal in lieu of the bond, as proposed in Paragraph "C"—the Atolia were not willing to accede to Paragraph "C" of the proposal. In the plan filed with the Court on November 6th, the claim of Atolia Mining Company is shown to be in the sum of \$6,000.00 on a conditional sales contract, plus an additional sum of \$1,700.00 on open account, which we understand is not a correct amount, nor is it a fully determined amount at this time—and perhaps a personal obligation of two of the stockholders. We are, therefore, at this time offering in lieu of Paragraph "C" of our proposal, that we will accept on behalf of the Corporation the [10] amount due the Atolia Mining Company as shown in the proposal filed

November 6th, on the conditional sales contract, in the sum of \$6,000.00, and will advance \$2,000.00 cash, upon the approval of the Court of this proposal, toward payment of the \$6,000.00, and the balance will be in twelve equal monthly installments, together with interest at 6% on the unpaid amount, to satisfy the claim of the Atolia Mining Company under their conditional Sales contract to the machinery and equipment, to which they own the title on the mining property.

Referee: Set that in writing in lieu of Paragraph "C."

Mr. Gray: What is the status of the \$1,700.00?

Mr. Cannon: The \$1,700.00 I presume to be subject to the litigation which is now in process between two of the stockholders of the Lincoln Company and the Atolia Company. That \$1,700.00 is in the present litigation, is it not?

Mr. Gray: No.

Mr. Morse: All of this indebtedness was incurred after the suit was filed and after the demurrer was argued and submitted to the Court for decision.

Referee: What does the \$1,700.00 consist of?

Mr. Morse: That, your Honor, is additional machinery purchased by Atolia, not on the conditional sales contract account but on open account.

Referee: As I recall the testimony of Mr. Koyen in the first meeting, the argument was made that Atolia applied certain royalties to the payment of some of these accounts; which one it was, I don't know.

Mr. Morse: We get credit for that on this statement.

Referee: How does that apply against the \$6,000.00 and the \$1,700.00?

Mr. Morse: The total of all of the indebtedness due Atolia is \$10,976.88, and then deduct \$2,034.75, leaves a net balance [11] of \$8,942.13, and then a discount of \$1,043.38, which is the interest to be adjusted on that basis. We accepted it but Mr. Pierce——

Referee: He offers to pay \$6,000.00—\$2,000.00 down and the balance in twelve payments.

Mr. Morse: Only on the conditional sales contract.

Referee: That's the first item of \$6,000.00; is that satisfactory.

Mr. Cannon: That was our offer.

Mr. Morse: Here is what the net result is, your Honor. Atolia has to be paid what is due them, and if that comes into the \$10,000.00 that you didn't put up, someone owes the creditors, and how are they going to get their money?

Referee: That \$6,000.00 is not unsecured claims. That's secured claims against machinery.

Mr. Morse: That's correct, but the rest of it is all unsecured.

Mr. Gray: That \$6,000.00 I'll straighten out so there will be no more argument about it because as far as the offer is made now by Mr. Pierce on machinery covered in the conditional sales contract, I understand he has offered to pay \$6,000.00—\$2,000.00 down, and the balance in twelve months,

which is \$333.33 a month, I think, plus interest at the rate of 6%.

Referee: That's wiping out all of your conditional sales contract and everything else.

Mr. Gray: Wiping out all the interest on the contract. I am not in a position to accept that. My instructions were to do business on the conditional sales contract, on a time basis. Then it would be \$6,000.00 plus earned interest, with \$2,000.00 down and the balance in twelve payments.

Referee: You want that modified, and you recommend its approval on the basis of \$6,000.00 plus \$2,000.00 down, and the [12] balance in twelve monthly payments of \$333.33.

Mr. Gray: If it's added to the \$6,000.00 and interest. I will have to go back to my client to get a different authorization.

Mr. Cannon: With respect to the other \$1,700.00, our position is that we want the interest on the \$6,000.00 wiped out. That is the principal amount due. That's all the principal they claim due. We are willing to pay that principal by the payment of \$2,000.00 cash and the balance, with 6% interest on the unpaid balance in twelve installments.

Referee: Is that acceptable?

Mr. Gray: I don't know. I can't accept, and I won't reject it. It's not in accordance with my instructions at the present time. I'll send it back to my principal, of course.

Referee: Did you want it put in your offer?

Mr. Cannon: That's correct.

Referee: \$1,700.00—what's that?

Mr. Cannon: We were advised by Mr. Gray earlier in the day that that is not the correct figure. Apparently, it is not the obligation of the Lincoln Mining Company. It's a personal obligation as evidenced by the fact that one sum in it is personal taxes of \$1,100.26. There is also a claim here for the Lincoln general taxes for the year 1949, for \$555.00, so it is obvious that any tax claim for any year prior to 1949 could not be a valid obligation of the Corporation.

Referee: We'll find out who it belongs to.

Mr. Gray: As a matter of fact, the conditional sales contract does not belong to the Corporation either.

Referee: If you get the \$6,000.00 for your machinery, you will be happy, plus—What's going to happen under this proposal here?

Mr. Gray: I can reach my principals in three-quarters of an hour. I can let you know at least by tomorrow morning. [13]

Referee: If it is found that Lincoln Mining Company's title is under assignment of that contract, then, of course, you will give the contract direct to Lincoln Mining Company now.

Mr. Gray: Your Honor, I cannot. It is understood now I will not make any deal on time payment with anyone except with Mr. Pierce personally, and I so advised him.

Referee: I want to be sure that Lincoln Mining Company, with Mr. Pierce included as a stockholder, gets a satisfaction of that conditional sales contract.

Mr. Gray: We will be glad when we arrive at a figure but we are dealing with Mr. Pierce, not with Lincoln Mining Company, your Honor.

Referee: You are paying that out of your pocket, outside of any royalties, covered by a note?

Mr. Pierce: That was the intention, yes, sir.

Referee: All these payments on the Atolia contract by note, subject to the 10% royalty deduction from the first royalties.

Mr. Pierce: I would execute, as soon as I have the title on the conditional sales contract transferred to me—I'll issue that to the Lincoln Mining Company so they will own the machinery, in order to make my lien a valid one.

Referee: Is that with respect to the hoist also?

Mr. Pierce: Yes, sir.

Referee: Is that understood, Mr. Morse?

Mr. Morse: I don't know where we are getting at, your Honor. He's paying the money out, that's true, but he is taking it out of the royalties.

Referee: He'll get it back from the royalties.

Mr. Morse: So the ultimate people should pay it—the Koyens and Theriots and the stockholders of the Corporation.

Referee: That may be true provided he does not complete the term of his option. If he completes the term of his option, [14] he pays it himself.

Mr. Cannon: I don't see that there's any particular problem, Judge, because Mr. Pierce will claim no title in this machinery. He expects to pay \$6,000.00 for that machinery. Mr. Gray's problem is—he wants to look to Mr. Pierce for payment,

and not to the Corporation, which is acceptable. It is part of our proposal, and the title to the machinery, regardless of where it is now, when payment is made, would vest in the Corporation because the Corporation has executed a note securing that advance to Mr. Pierce, and he would thereafter be paid presumably out of the royalties.

Referee: Until such time, he would hold the total to the machinery and would substitute for Atolia, the owner, until some satisfactory agreement is made.

Mr. Cannon: That is correct, because the Corporation, by virtue of the provisions, is going to execute a mortgage to him anyway.

Mr. Morse: While we are on that subject, we will clarify it right now. What are the terms of that note we executed? When is it due? I had assumed that the note would be drawn in accordance with the lease; is that correct—and payable from the royalties paid under that lease?

Mr. Cannon: Will it be payable solely from those royalties?

Mr. Morse: That was my understanding. Page 6 provides that from the first royalties, the lessee shall repay himself from the loan.

Referee: That's where you get it.

Mr. Cannon: Mr. Morse's question was whether or not that Lessee would look solely to the royalties for payment of his moneys.

Referee: He has his note against the Atolia Mining Company but according to that paragraph, it

seems to me it will be paid [15] from the royalties. Is that your understanding of it?

Mr. Pierce: That's the intention, Judge, but the reason we asked for a promissory note was so that we would have a negotiable instrument, and if clauses are written into the note defining the source of payments, then I don't have a negotiable instrument.

Referee: The payment of the note is made from the royalties under the agreement of November 21, 1950, but I imagine Atolia Mining Company would have to be satisfied as to that. They will look to you for payment outside of the money due them of \$333.33, plus \$2,000.00, on which you will have to give a note to them to satisfy them. Then you become the owner of the Corporation and make payment to the Atolia Mining Company of \$2,000.00; is that right?

Mr. Pierce: Yes.

Referee: Section "C" of your offer—get that to me as quickly as you can because I want to get that to Court, too. I would like signed copies of these agreements tonight if I can get them.

Mr. Gray: I can give you by tomorrow morning—possibly this afternoon—an answer on this proposition made by Mr. Pierce.

Referee: I shall be in Court at 9:00 a.m.

Mr. Gray: I would also like to have some kind of an understanding of the petition for reclamation.

Referee: What do you suggest on that gentlemen? If satisfactory arrangements are made with

reference to the payment of that machinery, what's the use of going ahead with that petition?

Mr. Gray: I think it will be necessary to have a formal Order so as to pass a good title to Mr. Pierce.

Referee: It's very easy to have a separate petition. You gentlemen get together on that. I think you gentlemen ought to [16] stipulate that if Colonel Pierce goes through with this at this time—I haven't seen anything to convince me that the Lincoln Mining Company has much of a title. Would it be satisfactory to agree on the purchase of that machinery? Something has to be done on the reclamation.

Mr. Gray: We will have negotiations on this thing.

Referee: On the other, too, will you?

Mr. Morse: I really think they remain a part of amendment "C."

Referee: You are taking out your machinery on this deal if he gives you \$6,000.00.

Mr. Morse: In addition to that \$6,000.00, there is due for machinery, which the Corporation has, these other items.

Referee: \$1700.00.

Mr. Morse: Yes—\$767.00 and \$612.00.

Referee: Is due the Atolia Mining Company for additional machinery which is now on the property, and who bought that, and when?

Mr. Morse: One is a written contract of December 3, 1948. The Corporation was not in existence at that time.

Referee: So somebody else is responsible for that one. This meeting is recessed until 9:00 o'clock in the morning, and have two copies of the contract properly signed, and prepare an Order and submit it to the Court, and send me about three copies of that proposed Order, too. It is understood that as far as the claims that have been submitted to the Court today are concerned, they are not approved for the amounts except for the purpose of accepting the reorganization plan, and that I shall recommend to the Court that he put on a bar date for the filing of any claims against the Corporation that you gentlemen are not able to prove, and I hope that when you all get together, you will have a fine experience with your Lincoln Mining Company, but any creditor or [17] stockholder will be privileged to file objections to any claims which I have listed on that sheet which you have, as to the amount. Some of them which the Court objects to, we will set up a hearing on. See if we can get through with this thing without spending a lot of time on some of these claims. Some are all ready. I think that Mrs. Koyen's claim for board approximates the amount which was deducted from the payrolls.

Mr. Pierce: Yes, sir.

Referee: And there are others in the same category. As far as the Koyen claim for \$7,000.00 is concerned, and the Theriot Brothers, I desire to have a very careful investigation of those claims and when they were contracted—when did they deliver the work, and anything that was delivered prior to the 17th day of December, 1949, at which

time the Lincoln Mining Company was organized—will have to be very substantially justified because if it is said that the corporation assumed those obligations, then we want to know what the stockholders paid for their stock, but it may be necessary, as a matter of equity, to offset some of these claims against some of the stock—and that involves a lot of other things. You gentlemen are familiar with the fact that you cannot set up a dummy corporation and have all the benefits and none of its obligations. You can't put in rotten stuff in a corporation and ask someone to come in and make it gilt edge.

(Hearing recessed until November 22, 1950, at 9:00 o'clock.) [18]

Wednesday, November 22, 1950—9:00 o'clock A.M.

Referee: The Referee has been delivered two copies of the signed Proposed Lease and Option Agreement and Offer, and you are to submit a revised Paragraph "C" in your offer.

Mr. Cannon: That is correct, Judge. However, I would like to withdraw the offer made as the proposed Paragraph "C" yesterday, and will now make a new proposal for Paragraph "C," which I believe will be agreeable to all parties concerned.

Mr. Gray: I think, as far as we are concerned right now, just an oral statement—

Mr. Cannon: In lieu of Paragraph "C," we propose the following: To pay to the Atolia Mining Company the sum of \$7700.00 as payment in full of all claims of the Atolia Mining Company on conditional sales contract, open account, or oth-

erwise, against the debtor, Lincoln Mining Company, or any of the stockholders of said company individually, as set forth in the——

Referee: Let's confine that to the claims listed on the debtor's petition so we don't have anything to do with this other suit.

Mr. Cannon (Continuing): ——amended plan of reorganization filed with said Court on the 6th day of November, 1950, on the following basis:

Referee: Is that your understanding of it, Mr. Gray?

Mr. Gray: My understanding is, the deal is \$7700.00 in payment of all claims and disputes between Atolia, Pacific Mining Company, Mr. Bradley, as President, and the Koyens and Theriots, and the Lincoln Mining Company, save and except that which is the basis of the suit now pending in the Seventh Judicial District [19] Court.

Mr. Morse: That's my understanding.

Mr. Cannon: Yes, that's right.

Mr. Morse: We settle once and for all this controversy this morning.

Referee: You are only settling those two items in the reorganization plan, and not anything else. Anything else has to be settled later when the Court sets the final date for filing claims.

Mr. Morse: That is true.

Mr. Cannon: That is correct.

Mr. Gray: I think that is all right. I think Mr. Morse and I can straighten out the other angle.

Referee: \$7700.00 worth of claims in reorganization.

Mr. Cannon: Let us get it straight now, because we want our offer to be accepted.

Mr. Gray: The only thing I am wondering about—you have here \$1700.00 open account; actually, that's the balance due on several open accounts between the parties and what I have agreed to accept on the balance on several open accounts.

Referee: And your offer is a compromise \$7700.00.

Mr. Gray: Everything except that which is involved in the suit in the Seventh District Court.

Mr. Cannon: Why couldn't we say this—add—“It is understood and agreed that all claims of the Atolia Mining Company shall be settled in full by this transaction, save and except those claims covered in that litigation now pending in the Seventh Judicial District Court between Koyen and the Theriots, et al., against the Atolia Mining Company, et al.

Referee: And identified and attached to Atolia Mining Company's petition.

Mr. Cannon: Now we are back to the basis of payment. [20] \$2500.00 cash upon the approval of this plan by the above-entitled Court; the balance of \$5200.00 to be paid in equal monthly payments of \$300.00 each, including principal, at the rate of 6% per annum on the unpaid balance, commencing the first day of the month following the approval of this reorganization plan by the above-entitled Court.

(Referee: The case referred to in that stipulation and agreement is: Wesley Koyen, Eva H. Koyen, G. W. Theriot, Dean P. Theriot and Winnifred E. Green, vs. Lincoln Mines, Inc., a Corporation, and Atolia Mining Company, a Corporation, (No. 3911, in the Seventh Judicial District Court of the State of Nevada).

Mr. Cannon: May I ask Mr. Gray if we may insert after the word "300," the words "or more"?

Mr. Gray: Absolutely.

Mr. Cannon: Insert the words "or more" after the word "300."

Mr. Gray: That's as I understood it. It is to be a promissory note executed by Mr. Pierce, secured by on the conditional sales agreement, on the personal property involved.

Referee: Upon the acceptance of that new chattel mortgage or conditional sales contract — the parties to release anything that is now on that machinery or anything of that kind so as to clean out all the claims and so as to get a title to Mr. Pierce on that deal; is that right?

Mr. Gray: Yes.

Referee: If you will initial this amendment, Mr. Morse, for this offer when Mr. Cannon prepares it, and send me up two or three copies so I can attach it in lieu of this Section "C" you have in this offer now, I will know it's what you want.

Mr. Cannon: There is one other matter that I want to call to the Court's attention so that everyone here will be familiar with it. Mr. Pierce and I went over the claims that are in the [21] files. It appears that the claims that have been filed,

including the amounts listed by the debtors in reorganization, amount to something in excess of \$12,000.00, exclusive of the Atolia Mining Company matter, and exclusive of the Clark County Wholesale conditional sales contract, so it would appear that the \$10,000 agreed to be advanced by Mr. Pierce is not sufficient to pay the claims in full that have either been filed or acknowledged. Now, that does not include the claims of the Koyens and the Theriots except for the claim of Mrs. Koyen for board, which is included in that figure, but it is in excess of \$12,300.00.

Referee: You understand, gentlemen, that those claims are for the purpose of accepting the reorganization plan — that the Court will set a definite date in the future for claims to be filed against the debtor corporation, and that you as representative of Mr. Pierce should file objections to any claims which are not on record or which subsequently are filed against the Lincoln Mining Company. If you and Mr. Morse can agree on any of these claims which you say are valid, then the Court will allow those and will set up the other claims on your objections for hearing to determine just exactly what they are, but you have to accept under the Court's Order. We do accept the claims filed and approved. They are only for the purpose of securing a desired number of claims under Section 179, and for voting purposes to accept the program. Undoubtedly, the Court will fix a time in the future for claims which were not included and, of course, couldn't be included in the original petition. There may be ad-

ministrative expenses and claims in the operation which should be applied.

Now, I wish you two would get together and attach the offer to an Order on what we have agreed on yesterday and today, and send them up to me so that I will be sure to get them in the Order which I will present to the Court for approval. I will [22] send you a copy of my report and recommendations, and to that will be attached the Order, and you will be given ten days in which to object to the form of my Order. If you don't object, it will be sign—affirmed, in other words. If you are in a hurry to get that in there, when I send you an Order which conforms to your ideas, you can immediately waive the statutory ten days and ask that it be signed forthwith. Be sure I have all your ideas in the Order for the Court to sign; and then I will put on the Findings—whatever the statutory form is—which will be in the form of Findings. I will have to re-write the thing in order to make it conform to the Court's ideas.

Mr. Cannon: Mr. Pierce has pointed out that in our last statement that those claims now exceed \$10,000.00. He wants it understood that the offer he has made is to loan not exceeding the sum of \$10,000.00 to pay all of those claims in full. Some adjustment must be made in the event there are more than \$10,000.00 of proven claims.

Referee: It would still be a debt against the corporation.

Mr. Cannon: That's the thing he doesn't want.

Referee: \$10,000.00 cannot be spread into

\$15,000.00 if there are that many claims approved. I don't know how many are going to be approved any more than you do but the claims which he has offered to pay will be submitted as they are to be approved by the Court. I understand that. That's the purpose of the thing, and that's what the acceptance is based upon. Those listed by the debtor should be approved. That's what their acceptance is based on, isn't it? I can't tell you whether there's going to be \$10,000 or \$9,000. I found one we thought was \$5,000, and it turned out to be \$3,100. If it's less than \$10,000.00——

Mr. Cannon: If it's more, that's all he is going to pay.

Referee: If he agrees or not, whatever the Court allows [23] he has to pay the administrative costs.

Mr. Cannon: Those costs are up to the Corporation.

Mr. Morse: We have nothing further, your Honor, at this time.

Referee: The matter will be recessed to the Referee's office for the purpose of any further Orders needed. As far as this matter is concerned, it will be recessed until December 15th here. In the meantime, if you have any petitions or anything you want to call to my attention, send them up on minimum notice. The reclamation hearing will be recessed over until the date of the acceptance of the plan.

Mr. Gray: If it's to be accepted.

Referee: That's indefinite.

Mr. Gray: Then until December 15th.

Referee: If the Atolia Mining Company and the debtor corporation enter into a stipulation or agreement, such as indicated in the modification of their offer, and this matter is approved by the Court without further ado, you gentlemen will agree by stipulation for the acceptance of the petition, excluding the rights of the debtor to the suit in the Seventh Judicial District Court, signed by Mr. Gray and Mr. Morse on behalf of the petition and the debtor corporation, if accompanied by sufficient copies of the stipulation so that I can send that out, too, with the Order.

Mr. Pierce, if this contract is approved while it is still in reorganization, you have to obtain supervision of it. I suggest you petition for the appointment of an attorney for the debtor. Mr. Grave's petition was rejected by reason of interest, and I imagine that you have no interest (to Mr. Cannon). You are not a stockholder or a director, and it might be well to have that set up in there. Since you can't have Mr. Morse. If you haven't any interest, you file that affidavit under Rule 44, and sign your petition as attorney for the debtor, as this matter is going to [24] last under reorganization, and we hope it will be sent back to you quickly, but we are going to have hearings on these claims, and I imagine we should have an attorney for the debtor on some of these claims.

Mr. Cannon: I may be disqualified by virtue of the fact that I represent the proposed lessee.

Referee: It may be. Look up that Rule 44, and

the appropriate Section in the Statute of Disqualification of Attorneys.

Reporter's Certificate

I Hereby Certify that the foregoing is a true and correct transcript of my shorthand notes of the hearing in the above matter taken on November 21, 1950, and November 22, 1950.

/s/ LILLIAN D. LANE,
Reporter.

[Endorsed]: Filed May 2, 1951. [25]

[Title of District Court and Cause.]

PORTION OF HEARING ON DECEMBER 15,
1950, RELATING TO CONFIRMATION OF
PLAN OF REORGANIZATION

December 15, 1950, 10:00 A. M.

Before: Honorable Frank W. Ingram,
Referee in Bankruptcy.

Appearances:

HAROLD M. MORSE, ESQ., on behalf of:
JOHN S. HALLEY, ESQ., and
MESSRS. MORSE and GRAVES,
Attorneys for Debtor.

W. HOWARD GRAY, ESQ., on behalf of:
MESSRS. GRAY & HORTON,

Attorneys for Atolia Mining Co., et al.

HOWARD W. CANNON, ESQ.,
Representing

G. McGUIRE PIERCE,

Proposed Lessee, and the Directors and Stockholders
of Debtor Corporation.

Referee: The record will show that since our last meeting here on the acceptance of the plan of reorganization, on the 21st and 22nd of November, 1950, at which time the amended offer of reorganization was approved, the Court did, on the 28th day of November, 1950, issue an Order and approved the offer and amended plan of reorganization, and instructed, and noticed confirmation of plan on this day before the Referee and Special Master. Notice of such meeting under Section 174 of the Act of Congress, and the alternate Section 236-2, is noticed for this time and place, and the Referee's record indicates that such notice was mailed to all creditors and all parties of interest, and on the 28th day of November, 1950, made an Order setting this time and place for a hearing under those sections, and the record shows the approval of the agreement and contract between the debtor corporation on lease and option agreement, dated the 21st day of November, between the Lincoln Mining Company and one G. McGuire Pierce, who made the offer at the last meeting releasing option to purchase, which agreement was submitted

to the Court and approved by the Court on the 28th day of November, 1950.

The matter before the Court this morning is the confirmation, first, of the plan, under Sections 161 and 170 of the Act, and we now have before us the confirmation of the plan approved by the Court, and the meeting of creditors properly noticed.

Mr. Morse: At this time, your Honor, the Corporation files its objections to the confirmation of the proposed plan. I have served a copy upon Mr. Cannon, the counsel for Mr. Pierce.

(Mr. Morse delivers the Objections to the Referee.)

Mr. Cannon: I might raise one point for the clarification, at least, of myself. I do not believe that the Corporation, having accepted the proposal, and the Order of Confirmation having been entered by the Court, could reverse legally its position and legally object to the thing they have presented to the Court and asked the approval of the Court.

Referee: I think that you should be given an opportunity, inasmuch as your contract was approved by the Court, to raise objection to the filing of the objections, and I will have to bring it to the attention of the Court because I cannot hear that kind of an objection, so you can file your objection to the objections and hand it to the Court. Trustees and the Referee do not [2*] hear that kind of a hearing; as long as that objection has been filed to the whole thing, and the Court wants to hear it, I will hear it. The Court sits in January.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

* * *

I shall report the objection of the Lincoln Mining Company at this late date to the confirmation of the program with your answer, and I imagine the Court will hear that. Such being the situation this morning, I do not see how we can proceed any further on that, so we will go over to the other matters set for this time.

Mr. Morse: If the Court please, for the purpose of the record, I wish to state that the matters contained in the objections by the Corporation were brought to my attention yesterday. As attorney for the corporation, I was requested to act by the officers and the directors, and I deem it my duty to act, they not having time to secure other counsel.

Referee: And the Court may raise the issue that the objections were not taken at the proper time, too. I don't think you can come into Court with this kind of a proceeding. The people who filed the plan and the people who have signed the agreement are in no position to now object because they found somebody else; but that's the expression of the Referee, and not the Court. The matter will go over, and I will report to the Judge, and it will probably be set for January.

- * * *

Mr. Cannon: May the record show, on behalf of Mr. Pierce, the proponent in this matter, that we are prepared at this time, and are willing, to proceed under the Order heretofore granted by the Court on our proposal, and we are also prepared to tender into the trust fund the funds agreed

upon, of \$10,000 in payment of the creditors' claims, and we are prepared further to proceed on the Atolia Mining Company, which is the assumption of their obligation in the total sum of \$7700, and we are also prepared to proceed with the payment of the stipulated sums on account of the Clark County Wholesale for the property sold heretofore under conditional sales contract. [3]

Referee: The record will so show.

* * *

It Is Ordered that the meeting for confirmation of plan be continued and recessed over until 10:00 a.m., February 2, 1951, in the United States Courtroom, Las Vegas, Nevada, and that any other meetings of stockholders or creditors under Sections 160, 171 and 174 shall be continued and recessed over until such date.

Reporter's Certificate

I Hereby Certify that the foregoing is a true and correct transcript of my shorthand notes of the hearing in the above matter taken on December 15, 1950, insofar as the hearing on that day related to confirmation of plan of reorganization.

/s/ LILLIAN D. LANE,
Reporter.

[Endorsed]: Filed May 2, 1951. [4]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT WILL RELY UPON APPEAL
FILED APRIL 7, 1951

Pursuant to Rule 75-D of Rules of Civil Procedure the appellant makes the following concise statement of points upon which he intends to rely upon this appeal:

I.

The order, judgment and decree of the Court was erroneous in that it ordered, adjudged and decreed that the confirmation of the amended and approved plan or reorganization referred to therein be refused. It should have ordered that the said plan be confirmed.

II.

The order, judgment and decree of the Court was erroneous in that it decreed that the lease and option agreement entered into on the 24th day of November, 1950, between Lincoln Mining Company, Inc., and G. McGuire Pierce be rejected, and in that it decreed said lease and option agreement to be null and void and of no effect.

III.

The order, judgment and decree of the Court was erroneous in decreeing as follows:

“That in the event that the debtor corporation and G. McGuire Pierce do not agree within ten (10) days from date hereof as to the amount of reimbursement which should be paid to him

for injuries resulting from the rejection of said plan and the cancellation of the said lease, these proceedings will be referred to the Referee in Bankruptcy, Frank W. Ingram, for the purpose of hearing and considering and determining the proper amount to be paid to G. McGuire Pierce as such reimbursement."

Such portion of said order was erroneous in that:

(a) Said lease mentioned therein should not have been cancelled nor should the plan have been rejected;

(b) Said lease and option agreement was a lease and option agreement executed by the debtor corporation pursuant to an order of the Court approving the same and the rejection and cancellation of said lease ought not to have been ordered;

(c) If the Court could properly have ordered the cancellation and rejection of said lease and option agreement (which is denied by this appellant) said portion of said judgment, order and decree improperly limited the Referee in Bankruptcy in determining the proper amount to be paid G. McGuire Pierce as reimbursement for injury resulting from said rejection and cancellation in that in finding number (8) of the decree of the Court it is provided:

"That the lessee in said lease, G. McGuire Pierce, is entitled to be reimbursed, after November 29, 1950, the date the Order of this Court was entered approving the proposed plan of reorganization, for monies actually expended in furtherance of and pursuant to said plan."

and did not provide for the damages that would be sustained by the lessee by such rejection and cancellation.

IV.

The portion of the order, judgment and decree set forth in paragraph (4) under the caption, "It Is Ordered, Adjudged and Decreed," was erroneous in that it decreed a course of procedure to be followed upon the refusal of confirmation of the plan and rejection and cancellation of the lease and option agreement to G. McGuire Pierce whereas the order, judgment and decree should have confirmed the plan and should not have rejected or cancelled the said lease and agreement and the procedure thereafter following should have been in accordance with the National Bankruptcy Act. Said portion of said order is likewise erroneous in respect to the provisions relating to reimbursement to G. McGuire Pierce for the same reasons as set forth in paragraph III of this statement of points upon which appellant will rely upon appeal.

V.

The order, judgment and decree of the Court was erroneous in that the Court did not state separately or at all its conclusions of law in compliance with Rule 52-A of the Rules of Civil Procedure. The said order, judgment and decree of the Court was erroneous in that the findings of fact were not sufficient to sustain the decree that the confirmation of the said plan should be refused and were not

sufficient to justify or permit the Court to reject and cancel the said lease and option agreement entered into between the debtor and G. McGuire Pierce.

VI.

The order, judgment and decree of the Court was erroneous in that the Court failed and refused to adopt all of the findings of fact of the Referee and Special Master and his recommendations.

VII.

The order, judgment and decree of the Court was erroneous in that the findings of fact on which said order, judgment and decree is based were erroneous in the following particulars:

(a) The findings of fact should have been those recommended by the Special Master and Referee;

(b) It is not true that the acceptance of the modified plan by the officers, directors and stockholders of said debtor corporation was made without full and careful consideration of the best interests of the corporation, its stockholders and its creditors;

(c) While it is true that work requirements by specific language of the said lease require only work or labor required under the laws of the United States and the State of Nevada on unpatented mining claims, it is nevertheless true that as an implied part of the lease the lessee would be required to perform work or labor or the absence of such would constitute an abandonment of the lease. Conse-

quently it is not true that the lessee could remain in control of and in possession of the properties of the debtor corporation for as long as forty years or any unreasonable length of time without performing work or labor other than that so required under the laws of the United States and the State of Nevada.

(d) It is not true that the plan of reorganization approved by the Judge of said United States District Court on November 29, 1950, under the conditions as they now exist is not fair and equitable.

(e) Finding number (8) is erroneous in that the lessee under said lease is entitled to the full benefits conferred upon him as lessee under said lease and not merely to moneys expended by him in furtherance of or pursuant to the plan of reorganization.

(f) Finding number (10) is erroneous in that it failed to adopt finding number (3) of the Referee and Special Master and is further erroneous in finding that the plan approved will not insure commencement of the operation of the property and will place it within the power of the lessee to refrain from operation of the property for as long as forty years.

(g) The findings of fact upon which said order,

judgment and decree is based are not supported and not justified by the evidence in the case.

Dated: This 20th day of April, 1951.

Respectfully submitted,

HAWKINS & CANNON,

KYLE Z. GRAINGER,

By /s/ KYLE Z. GRAINGER,

Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 30, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK
TO RECORD ON APPEAL

United States of America,
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that the following and accompanying documents and exhibits, listed below, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled matter, and that they constitute the record on appeal herein as designated by the parties:

Names and Addresses of Attorneys of Record.

Debtor's Petition for Corporate Reorganization.

Order Approving Petition.

Order Continuing Petitioner in Possession of Its Property, and Restraining Order.

Order of Reference to Frank W. Ingram.

Proposal of Plan for the Reorganization of Lincoln Mining Company, Inc., Debtor, With Plan of Reorganization attached thereto, filed June 30, 1950.

Supplement to Proposal of Plan for Reorganization of Lincoln Mining Company, Inc., Debtor, filed July 14, 1950.

Order for Hearing of Objections or Amendments to Plan Proposed by Debtor in Possession under Section 170 of Bankruptcy Act and to Continuance and to Hearing Objections, if any, to the Continuance of the Debtor in Possession under Section 162 of said Act, filed July 27, 1950.

Order Approving Plan of Reorganization, filed September 26, 1950, to which is attached Report of Referee and Special Master on Hearings on Objections of Amendments to Plan under Section 170 and for Continuance of Debtor in Possession under Section 162 of Bankruptcy Act, filed September 22, 1950, with copy of Plan of Reorganization attached.

Proposal of Plan for Reorganization of Lincoln Mining Company, Inc., Debtor, filed November 6, 1950, to which is attached Plan of

Reorganization, submitted by G. W. Thiriot, President of Lincoln Mining Company, Inc.

Order filed November 6, 1950, ordering that new plan proposed by G. W. Thiriot, President of Lincoln Mining Company, Inc., be considered and treated as a modification of the plan heretofore approved September 26, 1950, and fixing November 21, 1950, for consideration of such new plan, etc.

Order Extending Time for filing of claims and acceptances and for hearing objections to alteration and modification of plan and for confirmation of such altered plan and for notices of hearings thereon, Signed by Referee, and dated November 6, 1950.

Offer to Debtor in Reorganization, signed by G. McGuire Pierce, filed November 29, 1950.

Amended Offer to Debtor in Reorganization, filed November 29, 1950, attached to above-mentioned offer.

Lease and Option Agreement, filed November 29, 1950, attached to above-mentioned offer and amended offer.

Findings and Report of Referee, filed November 29, 1950.

Order Approving Offer and Plan of Reorganization signed by Judge Foley, filed November 29, 1950.

Order Fixing Hearings on Confirmation of Plan and Dismissal of Proceedings or Adjudication and Providing for Notice thereof, filed November 29, 1950.

Referee and Special Master's Report on Objections to Confirmation of Plan by Debtor Corporation and Reply to Objection by G. McGuire Pierce, Lessee, and Findings Thereon, filed December 21, 1950.

Objections by Lincoln Mining Company, Inc., Debtor, to approval or Confirmation of the Altered and Modified Plan of G. McGuire Pierce, attached to above-mentioned Referee and Special Master's Report.

Reply to Objections by Lincoln Mining Company, Inc., Debtor, to Approval or Confirmation of the Altered and Modified Plan of G. McGuire Pierce, attached to above-mentioned Referee and Special Master's Report.

Order to Show Cause for Order Confirming Plan of Reorganization Notwithstanding Objections of Debtor, filed Dec. 29, 1950.

Minutes of Court of January 9, 1951.

Minutes of Court of February 5, 1951.

Minutes of Court of February 12, 1951.

Minutes of Court of February 19, 1951.

Minutes of Court of February 26, 1951.

Minutes of Court of March 9, 1951.

Docket Entries of January 9, 1951; February 5, 1951; February 12, 1951; February 19, 1951; February 26, 1951, and March 13, 1951.

Findings of Fact and Order Refusing Confirmation of Plan, filed March 9, 1951.

Notice of Appeal, filed April 7, 1951.

Stipulation of Portions of the Record, Proceedings and Evidence to Be Contained in the Record on Appeal, filed April 30, 1951.

Cost Bond on Appeal, filed April 7, 1951.

Stipulation of Certain Facts for Use on Appeal, filed April 30, 1951.

Reporter's Transcript on Hearing on Objections to Altered Plan, filed May 2, 1951.

Reporter's Transcript entitled "Portion of Hearing on December 15, 1950, Relating to Confirmation of Plan of Reorganization," filed May 2, 1951.

Statement of Points Upon Which Appellant Will Rely Upon Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said United States District Court this 10th day of May, A.D. 1951.

[Seal] AMOS P. DICKEY,
Clerk.

By /s/ O. F. PRATT,
Deputy Clerk.

[Endorsed]: No. 12924. United States Court of Appeals for the Ninth Circuit. G. McGuire Pierce, Appellant, vs. Lincoln Mining Company, Inc., a Corporation, Debtor, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed May 14, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 12924

In the Matter of:

LINCOLN MINING COMPANY, INC., a
Corporation,

Debtor,

G. McGUIRE PIERCE,

Appellant,

vs.

LINCOLN MINING COMPANY, INC., a Corpo-
ration, Debtor,

Appellee.

CONCISE STATEMENT OF POINTS ON AP-
PEAL AND DESIGNATION OF RECORD
NECESSARY FOR CONSIDERATION
THEREOF AND TO BE PRINTED

To: The Honorable United States Court of Appeals
for the Ninth Circuit:

For his concise statement of points on which the appellant intends to rely, the appellant adopts the statement of points heretofore filed with the Clerk of the United States District Court for Nevada.

The Appellant hereby designates the entire record on appeal certified by the Clerk of said United States District Court, as necessary for the consideration of the appeal in this cause and to be printed.

The within document is to be printed as part of

the record, in addition to those items already designated; all filing stamps shall appear in the printed record, but the titles of the Court and the cause, and the names and addresses of attorneys appearing above the captions shall be omitted in printing.

Dated: This 17th day of May, 1951.

HAWKINS AND CANNON,

By /s/ HOWARD W. CANNON,

/s/ KYLE Z. GRAINGER,

Attorneys for Appellant.

The above is hereby approved.

JOHN S. HALLEY, ESQ.,

MORSE AND GRAVES,

By /s/ HAROLD M. MORSE,

Attorneys for Appellee.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 18, 1951.

